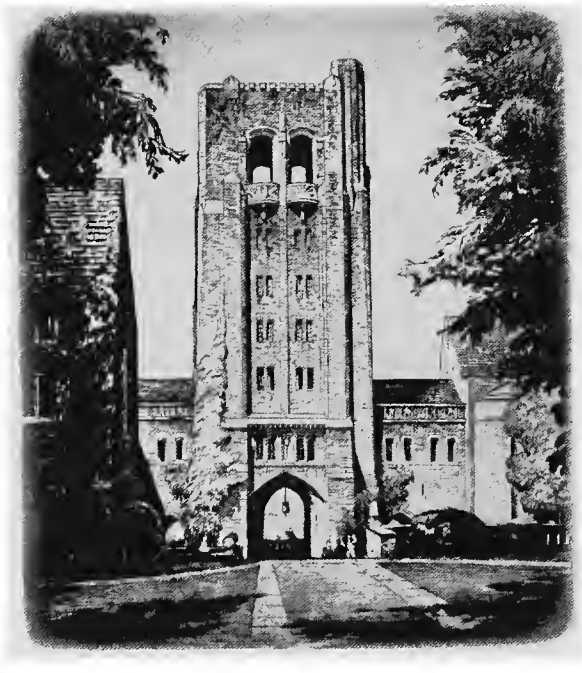

Reorganization

of the

Railways

JOHN BYRNE & COMPANY
Washington, D. C.

Reorganization

of the

Railways

By

TAYLOR VINSON

Huntington, W. Va.

JOHN BYRNE & COMPANY

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REORGANIZATION OF THE RAILWAYS

The experience we have had with our railway problems demonstrate very fully many of the evils that must be eliminated before we can hope to have an efficient system of transportation adequate to the public needs. Financing the carriers has not always been either honest or wise. Many errors, both of judgment and methods, have appeared in the construction and operation of the railways, and such mistakes have tended to depress their credit. Regulation by commissions and other public officials, reducing income and increasing expenditures, together with the restrictions found in State and National legislation, have all combined to increase the burdens of the railways and rendered them unable in most instances to properly perform their functions as common carriers.

In order to give the public the service to which it is entitled, these evil practices must be abandoned, railway finance reorganized and credit established and maintained. Rates and charges will have to be so adjusted on a reasonable basis as to yield the investor in

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REORGANIZATION OF THE RAILWAYS

The experience we have had with our railway problems demonstrate very fully many of the evils that must be eliminated before we can hope to have an efficient system of transportation adequate to the public needs. Financing the carriers has not always been either honest or wise. Many errors, both of judgment and methods, have appeared in the construction and operation of the railways, and such mistakes have tended to depress their credit. Regulation by commissions and other public officials, reducing income and increasing expenditures, together with the restrictions found in State and National legislation, have all combined to increase the burdens of the railways and rendered them unable in most instances to properly perform their functions as common carriers.

In order to give the public the service to which it is entitled, these evil practices must be abandoned, railway finance reorganized and credit established and maintained. Rates and charges will have to be so adjusted on a reasonable basis as to yield the investor in

railway securities a fair return. Capitalization should represent as near as may be the actual value of the property used in conducting transportation.

Complete governmental regulation with private ownership and operation must be the main purpose of the Congress to achieve in any plan that will meet the public requirements. It is believed that the plan herein submitted, if adopted, will afford a unified system of transportation that will be just to the public, the investors and the employees.

It was thought advisable to make a short analysis of some other plans that have been suggested, in order to contrast them—where they differ—as a part of the general argument:

PLAN

A

Establish—The National Transportation Court, having original and appellate jurisdiction, both judicial and administrative

B

Amend the Act creating the Interstate Commerce Commission and extend its powers, giving right of appeal to The National Transportation Court.

C

Give State Commissions primary jurisdiction over interstate and intra state commerce, with right of appeal to Interstate Commerce Commission.

These three tribunals will be all the machinery for a complete system of Governmental regulation of railways. They will have full and final jurisdiction to hear and determine every possible question that can arise pertaining to both state and interstate transportation. State Commissions will be auxiliary to the Interstate Commission.

There may be a question as to the power of the Transportation Court to exercise both judicial and administrative functions. As its judicial powers can only be exercised in matters pertaining to interstate commerce, it is more than likely that the Supreme Court would decide that any administrative tribunal vested with authority to deal with all questions affecting that subject could likewise exercise quasi judicial powers to the extent of affording a proper court review. If, however, its functions cannot extend to the judicial power, but would be confined to purely administrative matters, then its orders can be subject to court review in the manner and to the

same extent as Interstate Commissions may now be reviewed. If the commerce clause does not give the Congress power to provide a judicial review by a tribunal specially appointed for the purpose, it must follow necessarily that the Congress does not have the unqualified right to regulate interstate commerce.

In any event court review would lie only to the orders of the Transportation Court, as errors of State and Interstate Commissions may be corrected by that tribunal on appeal.

TRANSPORTATION COURT

Congress should establish a Tribunal by the name of

NATIONAL TRANSPORTATION COURT,

composed of

One railway executive and operator,
Two lawyers experienced in railway laws,
One large shipper,
One banker familiar with railway financing,
One representative of employees,
One representative of agriculture,
One representative securities holders,
One manufacturer.

Each to be among the ablest men of the class from which he is taken.

Term of office, twelve years, after first appointments; so arranged that three will be appointed every four years. Appointments made by the President and to be confirmed by the Senate. Removals can only be made by impeachment in same manner and for same causes as United States Judges are impeached.

Salaries: twenty thousand dollars a year.

POWERS OF THE COURT

(1) To appoint, remove and fix the compensation and prescribe the duties of all clerical and other employees, experts and attorneys, that it may deem expedient to properly perform the duties of the court.

(2) To have appellate jurisdiction over all orders issued by the Interstate Commerce Commission. This appeal to be the sole remedy for all those who deem themselves aggrieved by the Commission's rulings, and to be heard upon the original record made before the Commission. In the appellate proceedings the Transportation Court shall exercise administrative powers where the exigency of the case demands it; and shall also exercise its judicial powers, which shall operate as a court review of the Commission's administrative orders, to the same effect as District courts now have jurisdiction to grant court reviews, which authority and jurisdiction shall be taken from all courts now having such power and vested in the Transportation Court exclusively.

(3) To have same authority to enforce its rulings and findings, as United States Courts have to enforce their judgments and decrees.

(4) To issue charters of Federal incorporation of all railways and steamship companies handling interstate commerce, under forms to be prescribed by the court.

(a) The court to ascertain the average value of outstanding railway stocks running over a period of three years, and cause the federal company to issue its stock at par in payment for the outstanding stock on the basis of the average value so ascertained. The present holder of stock shall surrender the same for cancellation, on receipt of the federal corporation stock. The court shall thereafter ascertain the full value of the property of the railway, and the Federal corporation shall issue such additional shares of its stock at par to the present stockholders or their assigns, as may be necessary to cover the ac-

tual value thereof when so ascertained.

In like manner the value of railway bonds and other outstanding evidences of debt shall be ascertained, and any holder of such securities may surrender them and accept the stock of the Federal corporation at par in lieu thereof.

(b) The court shall not permit rates and fares to be fixed so low that they will not yield a minimum of five per cent. per annum, to be applied on all the stock issued by the Federal corporation under efficient management. The court may so adjust rates and fares as to produce an emergency fund over and above the five per cent. minimum. The emergency fund may be applied on dividends when an unusual condition arises to prevent the carrier from earning the minimum.

(c) The court may require the carriers to pay for permanent improvements, additional rolling stock, new construction, extensions, better ter-

minal facilities, out of the proceeds of stock sales.

(d) The court shall approve all stock and securities issues, fix a minimum price at which the same may be sold, and specify the purpose to which the proceeds will be applied.

(e) The certificates of incorporation to be issued by the court shall give to the carrier all the powers, including right of condemnation, which are necessary or expedient to enable them to construct and operate railways in the most efficient manner, including the right to condemn and appropriate streets, alleys, and other public property of cities, towns, villages, and other municipalities, whevere the same are reasonably necessary for transportation purposes.

(f) The court shall prescribe rules for the corporate organization of the company after the charter is issued.

(g) The court may direct the surrender of all existing charters to the states

under whose authority they were granted, and may enjoin any carrier operating under a State charter from doing any interstate or other business affecting interstate commerce.

(h) Existing carriers shall convey and transfer all their property to the Federal company under such forms of transfer as the court may prescribe.

(5) CONSOLIDATION AND REORGANIZATION

The court shall have and exercise full authority and jurisdiction over all matters pertaining to the consolidation and reorganization of railways. It may authorize one carrier company to acquire by purchase, lease or consolidation any parallel competing lines to be operated by a single management. This shall include the right to acquire and operate electric railways and steamship lines, as part of its transportation system.

The court shall, whenever practicable, raise all railway receiverships upon such a basis of capitalization as will

permit the carrier to earn five per cent. on its stock for dividend purposes, and to this end may intervene in any receivership proceedings for the purpose of aiding the court wherein the cause is pending to a speedy disposition of it.

(6) APPOINT A DIRECTOR FOR EACH CARRIER

The court shall appoint one competent person who will be an ex-officio member of the board of directors of each carrier company with the same powers thereon as any other member of the board, who shall attend all the meetings of the board, rendering such counsel and assistance as he may. He shall make such report to the court as it may require.

He may ask the board to remove the chief executive head of the carrier for inefficiency, or failure to properly perform his duties, and report his action to the court, which shall ascertain the facts, and if in the court's opinion the facts warrant it the board shall remove the official complained of, upon the request of the court.

(7) TERMINALS

Each carrier shall be entitled to the use of the terminals of any other carrier when practicable. The conditions and compensation for such use thereof may be fixed by the court when the carriers cannot agree. The court may order the increase of any terminal facilities and apportion the cost of the construction and maintenance thereof among the carriers using the same.

(8) FACILITIES

The court shall have power to require the carriers to provide themselves with all the necessary rolling stock, trackage, yards, terminal and other facilities for the expeditious handling of all the traffic that may be offered them under normal conditions.

(9) ADVICE FROM THE COMMISSION

The court may require information or advice from the Interstate Commerce Commission in furtherance of the discharge of its duties under this act.

(10) CONTROVERSIES WITH THE GOVERNMENT

The court shall hear and determine all matters in controversy between the carriers and the United States Government arising out of the possession and operation of the railways by the Government under the Act of Congress. It shall fix the date when the Government shall return possession and control of the carriers to their owners.

(11) GENERAL JURISDICTION

The court shall have general jurisdiction over all matters affecting interstate commerce or the agencies employed therein, and may prescribe and enforce all rules and regulations that will facilitate the movement thereof.

(12) EMPLOYEE'S COMPENSATION

The court shall establish a workman's Compensation Bureau, who shall make compensation for all injuries received by the carriers' employees, except injuries wilfully inflicted on himself by the injured.

The compensations shall be paid out of a fund created by the payment of one per cent. on each pay roll into the treasury of the bureau, one-fourth of which shall be deducted from the wages of the employees and the other three-fourths paid by the company. This percentage may be increased or decreased as the requirements may demand.

No suit shall be brought or maintained in any court by an employee or his personal representative against any carrier on account of personal injuries, but all compensations therefor shall be paid out of the fund provided for the purpose.

The court shall prescribe all the rules and regulations for administering the compensation department.

(13) TAXATION

The court shall, under such rules as it may prescribe, ascertain the value of railway properties in every state, county, municipality or taxing district; and on the values so found the state taxing authorities shall levy the same rate of taxation as it imposes on other tangible

property within its jurisdiction. The taxes so levied shall be paid at such times as the taxing authorities may direct.

No other taxes shall be levied or collected under state law upon the property, income, or stock of the carrier company.

(14) PRODUCTION OF EVIDENCE

The court shall have the same power to administer oaths, examine witnesses, require the production of records, books, papers and documents to be used as evidence that is exercised by United States courts of general jurisdiction, and a like power to punish for contempt or failure to obey its orders.

(15) RULES AND REGULATIONS

The court shall have power to prescribe all rules and regulations and procedure that may be necessary or expedient to enable it to properly perform any and all the duties required of it under this act.

(16) APPEALS FROM ITS RULINGS

The United States Supreme Court shall have jurisdiction to review, set

aside or modify any order or judgment of the National Court of Transportation wherein questions of law are involved. The Supreme Court shall determine whether such appeals to it shall be granted in each case, and prescribe the procedure therefor.

INTERSTATE COMMERCE COMMISSION

(To be reorganized)

(a) REMOVAL OF COMMISSIONERS

The commissioners shall not be removed during their term of office, except by impeachment proceedings in the same manner and for the same causes that United States judges are impeached.

(b) APPELLATE JURISDICTION

Any party complaining of an order or finding of a state commission, which may affect either directly or indirectly interstate rates, or differentials, preferences, discriminations, or practices in the operations of the carrier, or lessens the ability of the carrier to earn the minimum dividend of five per cent. on its stock, may have such order or finding reviewed by the Interstate Commission. The Interstate Commission shall prescribe the method and procedure of appeal. It may hear the matter on the record made before the state commission, or it may require additional

evidence. Upon such hearing the Commission shall enter such order as it may deem just, if it pertains to or affects directly or indirectly interstate commerce; but if it finds that the order of the state Commission does not affect interstate commerce, the appeal shall be dismissed and the order appealed from shall become final.

(c) STATE COMMISSIONS

Every state Public Service Commission shall be auxiliary to the Interstate Commission, and shall have authority to hear and determine in the first instance all questions of rates and practices in railway operation, preferences and discriminations arising within their respective states, affecting both state and interstate commerce. The Interstate Commission may refer any proceedings instituted before it to the State Commission having jurisdiction thereof for investigation and report. From the orders of State Commissions an appeal shall lie to the Interstate Commission by any party aggrieved.

(d) GENERAL PRINCIPLES

So far as practicable the Commission shall ascertain, promulgate and apply in each case general principles of transportation. As far as practicable the Commission shall so adjust rates as to permit the movement of all commodities that may be offered for shipment, provided they will yield a profit to the carrier and not materially interfere with the movement of general traffic.

(e) BUREAU OF STATISTICS

The Commission shall enlarge its statistical bureau, so as to include all the statistical work of the National Court of Transportation. The bureau shall issue monthly bulletins showing receipts and disbursements of the carriers and changes in rates made in that month.

(f) SUSPENSION OF SCHEDULES

Schedules of new or changed rates shall not be suspended for a longer period than ninety days in any event. Whenever the Commission can not complete its investigations within that

time, it shall provide a method whereby the carrier shall refund to the parties entitled any excess charges if the rates should not be sustained.

(g) MINIMUM RATES

The Commission shall not fix rates so low that they will not yield a minimum of five per cent. for stock dividend purposes, after paying operating expenses, fixed and overhead charges, under efficient management, but may fix minimum rates not inconsistent with this provision.

(h) DIFFERENTIALS

The Commission shall have power to determine and fix all differentials between rates on commodities moving from different points to the same market over different lines of railway.

(i) WAGES

Controversies over wages and working conditions between carriers and employees shall be submitted to the Commission for investigation. After making the investigation the Commission shall make a recommendation as

to how the controversy should be settled, specifying the details thereof. Pending the investigation the carrier shall neither increase nor decrease the wages. Any understanding or agreement made between two or more employees to strike shall be deemed an agreement in restraint of interstate commerce and subject to the law prohibiting such agreements. This shall not, however, prohibit any individual employee from resigning his position, provided he has no previous agreement or understanding to do so.

(j) POOLING ARRANGEMENTS

Any two or more carriers may enter into such pooling arrangements as they may deem advisable, which shall be approved by the Commission when in its opinion the public interest will not be prejudiced thereby.

(k) CONFERENCE OF CARRIERS

The carriers may confer and agree with each other on their respective schedules of rates to be filed before the Commission, and the same shall be adopted and remain in effect until com-

plaint is made, or changes made by the carriers. In preparing such schedules the Commission shall assist the carriers in determining the reasonableness of such rates in the first instance.

(l) COAL CARS

The carrier on whose line coal is mined may require a connecting carrier over whose line the coal is distributed to furnish an equitable proportion of coal cars in which to handle the traffic. Such equitable proportion shall be determined by the Commission, when the carriers fail to agree among themselves.

(m) DISTRIBUTION OF EXCESS EARNINGS

The Interstate Commission shall whenever practicable so adjust non competitive rates and fares, and the division of joint through rates between strong and weaker railways, and the compensation for the exchange and use of equipment on their respective lines, as to favor the weaker roads, and lessen the excess earnings of the more prosperous carriers when such excess exists.

Provided, however, That no railway shall be required to render any service that does not yield some surplus over the out-of-pocket cost of handling the particular traffic.

(n) CARRIERS' COMPENSATION FOR SERVICES TO THE GOVERNMENT

Whenever representatives of the United States Government fail to agree with the agents of the railways on the compensation for any services rendered or to be rendered to the government, the Interstate Commission shall fix such compensation and the time of its payment.

(o) AMENDMENTS

All Interstate Commerce Acts will be amended so as to include the foregoing provisions. All acts inconsistent with these amendments, and with the act creating the National Transportation Court, shall be repealed.

EXISTING EVILS MUST BE REMOVED

The railways of the United States have been reduced to a condition that to say the least is most deplorable. Past railway financing and operation, together with the method of governmental regulation that has been applied to the carriers for the last decade by both state and nation, has been such that now our whole transportation system seems on the verge of collapse. Through a mistaken sense of duty to the public our public tribunals have persistently reduced the revenues to the carriers, while at the same time increased their expenditures, and thereby so affected their credit as to make it impossible for them to secure the capital necessary to supply themselves with adequate facilities with which to take care of the public's business.

Under an emergency the operation of the carriers has been taken over by the government while still remaining under private ownership. The Director General seeks to retain the carriers for a period of five years after peace has been promulgated, while the present law extends this control for twenty-one months thereafter. In the meantime the Con-

gress is receiving suggestions in an endeavor to formulate a plan for placing the railways in such a safe and sane position that they may discharge all the functions of common carriers, and give to the public an adequate and efficient transportation.

What should be done with the railways is a question that the Congress must answer by appropriate legislation. Many recommendations have been made and many more can reasonably be anticipated.

Any effective plan which the Congress may adopt that will meet the public demands must contemplate the removal of certain obstacles that have heretofore hindered the carriers in the discharge of their duties. Every hindrance so far as practicable should be removed, so that the management will have a free hand to render the best possible service to the public. The carriers must be unhampered by restrictive laws, either State or Federal.

Among the Federal laws that restrain and limit the action of the carriers to the public detriment are: the Sherman Anti-Trust Law, the Clayton Act, the Erdman-Newlands Act, the Employers' Liability Act, the Adamson Law. The handicaps which these acts of Con-

gress place on the carriers should be removed by the repeal of the statutes so far as they apply to railways and their employees. A proper tribunal with full regulatory power can correct the evils that these laws were intended to prohibit, and such remedies will be infinitely better for the public, the carrier and the employees, for they will be both speedy and equitable to all concerned. When the public welfare will be advanced thereby the regulatory tribunal will permit and authorize the carriers to combine parallel competing lines, enter into pooling arrangements, and joint use of equipment and terminals, and co-operate with each other. Every interest of employees can be better secured by having such interest protected by the regulating tribunal and all their rights determined at once than is possible by statutory enactment, which requires a long court process to be enforced.

State laws are almost universally restrictive of the powers of the carrier, and wherever they can materially interfere in any way with the carrier's ability to give the public an efficient and equitable transportation they must be set aside, for all handicaps and obstacles that stand in the way of an adequate and

speedy service must be removed. This can only be done by Federal incorporation.

The most vital evil that threatens the railways is a loss of credit brought about principally by the rate making powers refusing to permit rates that will produce sufficient revenues. The cure for this evil is to prohibit the Interstate Commerce Commission from fixing rate schedules so low that in normal times they will not, under efficient management, produce a minimum of five per cent. per annum on the actual value of the property to the investor.

With the foregoing evils out of the way the managers can have no excuse for any failure to give the public the most efficient transportation that any country has yet enjoyed.

That these things may be accomplished and the carriers required to discharge their full duty to the public, to their security holders and to their employees, a strong independent tribunal must be created, with full power and jurisdiction to determine every question pertaining to the subject of transportation. Such a tribunal I call The National Transportation Court.

EVILS TO BE ERADICATED

I

Present methods of railway capitalization—

(a) Over-issues of securities, by re-issuing stock on basis of actual value of property.

II

State police powers that affect adversely Interstate Commerce, such as

(a) State control over railroad charters.

(b) State regulation of rates and practices.

III

State valuation for tax purposes.

IV

Existing railway financing.

V

Present methods of court review of Commission's orders.

VI

Strikes of railway trainmen to be prevented.

VII

Restrictive Federal legislation will be repealed.

The establishment of the plan herein suggested will secure—

(1) A scientific and unified system of transportation, applicable alike to both State and Interstate Commerce.

(2) A stable and certain credit for the railroads, that will enable them to sell their stocks to investors at not less than the par value.

(3) The elimination of all excess capitalization by having securities issues represent the actual value of the railroad property, used in conducting transportation.

(4) A minimum return of five per cent. per annum to the stockholders, after paying expenses and fixed charges.

(5) Skilled experts—State and Interstate Commissioners—to pass upon all rate regulation, preferences, discriminations and practices in railway operations.

(6) A court review of Commission orders limited exclusively to the Transportation Court, which will hear the case on the original record made before the Commission, without any additional pleadings or evidence.

(7) A settlement of all railway labor controversies by the Interstate Commerce Commission.

(8) The uninterrupted operation of trains and the prevention of strikes.

(9) The Federal incorporation of railways and the preservation of their identity, both as to property and management, and security holders.

(10) The co-operation of railways, by pooling arrangements, consolidations, joint use of tracks, terminals and equipment, with the approval of the Interstate Commission, with competition in service.

(11) The establishment of a workmen's compensation for injured railway employees.

(12) Federal tribunals vested with full regulatory power having authority to hear and determine every possible question that can affect railway transportation, with private ownership and management.

(13) An equitable distribution of excess earnings whenever such condition may arise, by giving weaker roads a greater share of joint through rates,

lowering noncompetitive rates, and a graduated tax on excess profits.

(14) An expeditious and inexpensive remedy to shippers whereby they can have their complaints tried before the State Commission, with appeal to the Interstate Commission, and reach a final determination of it within one-third the time and for one-fifth the expense that is now required.

(15) Lower levels of rates, and efficiency of service.

NECESSITY FOR A CENTRAL AUTHORITY

Every successful enterprise must have in some form or other a head to it with supreme authority to direct its activities. This is peculiarly true of any plan that will insure a scientific system of transportation. It is impossible to have an efficient governmental regulation of the carriers, without the creation of a Federal Tribunal to which all questions affecting transportation, whether of rates, discrimnatory practices, capitalization and finance, wages and operation may be referred for solution and adjustment. In the very nature of the problems to be solved such a tribunal will be called upon to exercise both judicial and administrative powers, and therefore I am calling such a tribunal The National Transportation Court. It will have both original and appellate jurisdiction, in administrative as well as judicial questions necessary to be solved. It would possess original jurisdiction in all matters of (1) Federal incorporation, (2) securities issues, (3) extension of lines, (4) new construction, (5) removal of executive heads of the carriers for inefficient

management, (6) appointment of a member of the board of directors of the carrier companies, (7) ascertainment of railway values for taxation and stock issuing purposes, (8) establishing and administering a workman's compensation bureau for the benefit of injured employees, (9) the reorganization of bankrupt carriers, and (10) the settlement of all the questions growing out of Government operation. This court would have appellate jurisdiction over all the orders and judgments of the Interstate Commerce Commission, and its finding thereon would be final except in such questions of law as the Supreme Court might determine that it should review. In considering the appeals from the Interstate Commerce Commission the National Transportation Court would exercise the same judicial functions that the Federal courts may now exercise over the orders and findings of the Commission. This appeal would be the judicial remedy of any party who complains of the Commission's orders, and would provide an expeditious method of court review of the Commission's findings. It would simplify and expedite the court review very greatly, as the questions could be determined upon the original record made before the Commission with-

out any new pleadings or evidence, and thereby reach a final judgment within a month or two after the Commission's order is entered, whereas under the present law an independent suit must be brought in some court and prosecuted under regular court forms, involving the making of an entirely new record on new evidence. These court proceedings are very expensive to the parties, and are attended with all the delays incident to a long and protracted litigation. Pending the period when the case is before the court for final judgment both carrier and shipper are at a loss as to how to regulate their business affairs. In addition to doing away with the expense and delay of present court proceedings, by substituting a speedy and inexpensive appeal to the Transportation Court, the greater advantage lies in the fact that the appeal will be heard by a tribunal largely composed of expert transportation men, already familiar with all the law and practices of the transportation business. On the other hand under the present system the judge before whom a proceeding is brought to enjoin the Commission's order, is not acquainted with the theories of rate-making or rate structures and to a certain extent must grope in the dark for his conclusions, however

learned he may be in the general principles of law. There is necessarily a great lack of harmony in the rulings of the courts of original jurisdiction, where so many of them in every part of the country are called on to solve these transportation problems and as a consequence a new trial is generally had by one side or the other taking appeals either to the Circuit Court of Appeal or to the Supreme Court, and frequently to both.

It is apparent that this long round-about method of reviewing by the courts, the findings of the Commission, involving as it does so much cost and delay, must be superseded by a shorter and simpler procedure before a highly expert tribunal, if the welfare of both public and carriers is to be protected.

The power to supervise and correct the orders of the Commission, and thereby centralize in one tribunal the whole scope of court review, as well as to fix the general principles upon which rate structures should be based, and transportation conducted, must be exercised by one central tribunal before it is possible to have a unified system of transportation.

This tribunal will also have in the last analysis supervision and appellate jurisdiction

over all State action that in any way materially affects the national transportation. All State powers over the instrumentalities used in interstate transportation will be made to harmonize and co-operate with the Federal scheme of regulation, so that the whole can be molded into one scientific unified system. This harmony can be brought about in a very simple and easy way by providing that appeals may be taken from the findings of State Commissions to the Interstate Commission on all rulings that affect either directly or indirectly interstate commerce. In this way all the State Commissions can act as subsidiary organizations to the Interstate Commission to whom cases brought in the first instance before the Interstate Commission may be referred to the State Commission for investigation and report. This procedure would result in a harmonious action of all regulating tribunals, State and Federal. State tribunals would be part and parcel of the unified system of Federal regulation operating under national law. This would eliminate all questions of conflicting powers, and divergent findings which heretofore have been a great menace to both the public and the carriers, resulting in favoritisms and discriminations.

Under the plan proposed the powers of the Interstate Commerce Commission would extend to (1) all rate making and rate regulation including differentials; (2) approval of railway consolidations and joint operation of parallel competing lines; (3) approval of pooling agreements between the carriers; (4), directing and regulating the joint use of terminals; (5), the prevention of unreasonable preferences and discriminations; (6), adjust all questions of interchange of traffic between the carriers including the pro rata share for joint through traffic; (7), hear and determine all matters of wages and working conditions of employees in controversies concerning them, and (8), hear and determine all appeals from State Commissions.

In any system of railway regulation that may be devised it will be necessary to provide the legal machinery with which it can be directed and made effective. This machinery should not be complicated nor difficult to understand. It should be plain and simple, and at the same time have the power to solve speedily and wisely every practical problem and question pertaining to transportation. It is earnestly insisted that the machinery suggested is adequate for that purpose. The

State Commissions will be preserved and their expert knowledge and ability will be used in aid of a unified system of Federal regulation without becoming a menace to it as heretofore. There will be a commission on the ground, representing both intrastate and interstate interests, under an appellate supervision of Federal authority. All evidence may be taken before them in the first instance, which will not only facilitate the hearing, but will do away with the necessity of sending out special examiners who are often poorly equipped for the business in hand. Under the present practice the evidence in a large number of cases before the Interstate Commission is taken in Washington, requiring high-priced experts and counsel to come across the continent and remain for weeks and months at a time. It can reasonably be anticipated that in practice there would be no appeal taken from a great number of the findings of the State Commissions, even though they did involve interstate questions, for the National Transportation Court would so systematize all transportation business that the State Commissions would be guided by the rules promulgated by this court of last resort.

The National Transportation Court, with

its original and appellate jurisdiction; the Interstate Commerce Commission having both original and appellate jurisdiction, and the State Commissions having certain original jurisdiction, constitute all the machinery required to put into operation and maintain an adequate system of transportation.

By the creation of these three tribunals and linking them together in a harmonizing cooperation, the evils which have driven the country's transportation into a state of collapse will entirely disappear.

It would be interesting to know how great has been the evil and how much it has cost the public directly and indirectly, that has resulted from the States' efforts to control the railways and regulate commerce. Let us be generous in our estimates of the motives back of this general purpose and say that in most instances it was the expression of an honest purpose to correct inequalities either real or imaginary.

The fixing of unreasonably low passenger rates by legislative enactment, changing the common law liability for the acts of fellow servants, requiring duplicate train crews, liability for killing stock regardless of negligence, progressive increase of taxation, per-

sistent reduction of local rates, and many other restrictive and oppressive obstacles thrown in the way of the carriers, have been the rule of State action heretofore. These have all tended to render the carrier less able to discharge its full duty to the public, and the public have suffered and are now suffering the consequences of these mistakes, for we have to pay the bills no matter what happens. Congressional action has been more restrictive than liberal toward the carriers, greatly increasing their troubles and their expenses without giving them any corresponding benefits. Both State and Federal laws have denied to the carriers the right to co-operate not only for their mutual benefit, but for the benefit of the public, and have forced them into useless and wasteful competition that has cost many millions of dollars each year, and compelled expensive and inadequate service. If we add to the evils above enumerated the extremely high cost of doing their financing in the last ten years in the way of commissions, discounts and bonuses, in order to secure the money required in their operation, it should occasion no surprise that the carriers are now in such a state of confusion and despair that they will utterly collapse unless something is soon done

to remove these forces that are uniting to drive them into bankruptcy. And, the consequences flowing from such a disaster must be borne by the public.

The experience of the last two years affords conclusive proof that railways cannot perform their functions as common carriers, unless the Congress removes all these obstacles, and places them in a position where they will have the financial and physical ability to perform every service which the public interest may require. Without equipment and terminal and trackage facilities, and necessary extensions, the carriers can no more do their work efficiently than a man may do his with his hands tied. But it requires money, and vast sums of it, to secure these things, and the carrier can procure money in only one of two ways, viz: either out of surplus earnings, or selling securities. Very few if any of the railways can earn enough surplus to meet these demands, and consequently they must resort to stock sales with which to supply the necessary capital. But unless they are practically certain of earning enough to pay a five per cent. minimum dividend on their stock they cannot sell it except at a ruinous discount. The public must suffer by a failure of the car-

riers to do their full duty, and they cannot perform their duty unless they can secure necessary capital, and they will never be able to get the necessary capital until the Congress removes their shackles. We, the public, are more interested in having an adequate railway service than in any other factor in our industrial life. If we are to prosper we must have a dependable transportation system, for without it we cannot know how to produce or buy or sell, or arrange our ordinary business affairs. Give us the most efficient transportation system that is possible, and the public are willing and anxious to pay whatever is necessary to secure it. Give the carriers the power to serve the public, and a Federal tribunal the power to require them to do it whenever they hesitate or fail to perform their functions.

Additional Regulating Bodies

Any plan for the reorganization of our transportation system which the Congress may adopt will have to provide tribunals or commissioners that can determine the infinite variety of questions that will arise from day to day. The solution of these problems should not be postponed any longer than is necessary to take the evidence and present argument.

No tribunal should be so congested with business that it could not take up and speedily dispose of the matters that come before it. It is apparent that no one commission or court could have the time to hear and decide these controversies as they arise. All the plans that have been laid before the Senate Interstate Commerce Committee contemplate new aids and helps to the Interstate Commission. The witnesses all realize that the work to be done would be much more than the Commission could possibly perform. Some have recommended that a number of subsidiary Commissions be organized throughout the country with jurisdiction over transportation questions that arise in their respective districts. The carriers have suggested that a Secretary of Transportation be appointed as a member of the Cabinet with very extensive authority, in addition to the Interstate Commission. These various suggestions have been made under a belief that amounts to positive knowledge that no one tribunal could do the work that will be required. Provision for a court review of the orders of the Interstate Commission will have to be made. This review should be made speedily by a body of experts exercising judicial powers rather than by the regular

law judges sitting as a court and not expert in transportation questions. The cost and delay of bringing these cases to a final judgment in the ordinary legal procedure under the present method should be a sufficient reason for the creation of a Transportation Court before which all the orders of the Interstate Commission would have to go for court review when anyone sought to invoke that remedy. This method of appeal to the Transportation Court would divest the inferior United States Courts of their present jurisdiction over these matters, and bring them all to one tribunal that could decide them along the lines of a unified system of transportation of which it would be the head and directing force. In addition to exercising appellate powers, and court review over the orders of the Interstate Commission the Transportation Court would have original jurisdiction over all railway financing, Federal incorporation, securities issues, extensions and new lines, reorganization of bankrupt properties, settlement of questions between the Government and the carriers growing out of Government operation; to require carriers to install and maintain an efficient service, and supervise the workman's compensation bureau. The Court of Transportation,

the Interstate Commerce Commission, and the State Commissions would have all they could reasonably do to properly regulate the railway and water transportation of the United States. This plan will provide all the machinery that will be required to place the system into operation and keep it in the best working condition, and at the same time it will be neither complex nor difficult, but will be plain, simple and especially expeditious. It will have the advantage over other plans that have been offered, in that it will be able to work out and maintain a unified and harmonious system of transportation for the whole country.

RAILWAY FINANCING

The history of railway building in the United States is mainly a chronicle of the efforts of the ablest pioneers in the country's development to secure capital with which to carry on their enterprises. Money was not plentiful nor was credit widely extended. The only practical way whereby capital could be secured for any large construction program was to hold out to the investor the prospect of large profits. In order to sell bonds secured by mortgage over the property, it became necessary to issue to the purchaser of a bond a stock bonus equal, and often greater, in amount than the face value of the bond. The inducement to the investor was the expectation of a large profit to be realized out of the increased value of the stock to be brought about by a successful operation of the road after its construction was completed. Prior to 1900 most of the railways were originally constructed by this method of raising the necessary capital. Most of the railways of the United States owe their beginning and original construction to a policy of issuing to the investor large blocks of watered stock. It was a

system of financing based on necessity, and to this system we owe in a large measure the marvelous development of our resources that took place in the last half of the nineteenth century. The investor was moved to part with his money by the expectation of a large return in the shape of profits. Railway investments were precarious, and attended by great risks, owing to the fact that most of the lines had to go into bankruptcy and reorganization involving tremendous losses to the original investors. Their expectation of great profits did not always materialize, and they suffered losses instead of realizing profits. The present holders of railway securities are actuated by the same motives as their predecessor investors—namely, the expectation of profit. And any future investor will be moved by precisely the same consideration, to-wit: profit. It has been estimated that the carriers will require in the next five or six years an additional expenditure of ten billions of dollars in order to rehabilitate their properties and place them in a position to properly move the traffic that will be offered them under normal conditions. That enormous sums of money for this purpose must be supplied in the immediate future is admitted by all. To raise these colossal

sums almost at once is an imperative necessity, for it is a condition precedent to any efficient system of transportation that may be devised. Where is it coming from, and how can it be secured? There are those who believe that the Government should either furnish the money out of its own treasury or lend its credit through which the money could be procured. These persons do not seem to realize that for many years to come the taxpayers will have to bear very heavy burdens to maintain the financial integrity of the conutry on the obligations that the Government has already incurred. The Government's outstanding obligations together with billions yet to be issued, have already impaired its credit, for its bonds are now selling in the open market at a discount of seven or eight per cent. It would be very unwise to impose upon the Government the further obligation of providing capital for the carriers by assessing the taxpayers, when the Congress can enable the carriers to secure their own money on as favorable terms as those by which the Government can secure it.

Whatever new money the carriers may require can be and should be provided by investors purchasing the carriers' securities.

The future investor being no different from those either of the present or the past, can only be tempted to part with his money by a reasonable expectation that his investment will be profitable. Under the present laws, both State and Federal, any investment in railway securities is attended with great risk of loss, and for whatever small amounts the carriers can secure, even for renewal purposes, they have to pay an exceedingly high rate of interest and ruinous discounts and commissions.

If the President should turn the roads back to their owners without any legislation of Congress, and leave them as they were before the Government took charge of them, it would be impossible for most of them to sell their securities for new money and we would have a disabled service and ultimate bankruptcy. Let us bear in mind that it is just as necessary to the public welfare that investors should purchase large amounts of railway securities in the immediate future as it is to have the trains operated now. It is expedient, therefore, that some plan be devised and put into operation at an early date whereby investors will feel justified in purchasing new issues of railway stocks.

There are two essential factors that influence those who have money to invest—the element of safety and risk, and the prospect of profits over and above the usual interest return on the sum invested. The security of an investment reduces profit expectations. As the security is lessened, there must be a corresponding expectation of increased profits over and above interest returns. The most attractive stock that can be offered to an investor is one with a fixed minimum dividend that is certain, or as near as human foresight can make it with a reasonable prospect that the dividend can be increased by efficient management of the property. If a plan should be adopted whereby the carriers could be compelled to earn for their shareholders a certain dividend, at least of five per cent. per annum, this would make the investment absolutely safe as to principal, and sure for a reasonable interest or dividend return. Add to this the sanguine expectation of a profit in the way of increased dividends, and the investor would feel that a railway stock was the most attractive purchase that he could possibly make. With this character of stock to offer the public, the problem of railway financing would be solved. Such securities would be almost as current as

a bank note. It would be the safest possible investment for savings banks, insurance companies, and trustees and executors, and especially for all those who are not in active business but depending for their living upon small incomes. This stock would be the very best kind of collateral for bank loans. This character of stock can be issued by the railway companies in the following manner, viz:

All the carriers will take out Federal charters of incorporation from the National Court of Transportation. The present companies, whose charters were issued under State authority, would convey and transfer all their property to the Federal corporation having the same name. As a consideration for the property so taken over the Federal Corporation would agree to pay or take care of all outstanding obligations of the present company as they matured, and in addition to the assumption of these debts the Federal Corporation would issue to the existing stockholders its own stock at par, in payment for their stock based upon an actual value which would be ascertained and fixed by the National Transportation Court. The present State corporations would be dissolved and all their stock issues cancelled. All stock issues of the Fed-

eral corporation would be approved by the Transportation Court, and would yield a minimum dividend to the stockholders of five per cent. per annum. The law would provide that rate schedules should not be fixed so low as to prevent the carrier from earning a minimum dividend of five per cent. under an efficient management. The Transportation Court would have the power to require a change of management for inefficiency.

It can be readily seen, when fully understood, that there are no real difficulties in the way to prevent the adoption of this plan.

FEDERAL INCORPORATION

In the exercise of its supreme authority over interstate commerce the Congress can provide a method for the incorporation, under Federal law, of all interstate carriers. The advantages of operating under a Federal charter of incorporation, instead of State charters, are very great. Among the many reasons the following may be mentioned:

(1) Every carrier would have the same powers and would be subject to supervision by the same authority and tribunal.

(2) There would be a central Federal body

to approve and authorize all stock issues. This would give to the investing public the assurance that every share of outstanding stock represented an actual cash value that had gone into the property. In most of the states the carriers are compelled to pay to the State large sums of money for the privilege of making new stock issues, or bond issues, and where a railway runs through several states, these fees amount to very large sums. The delay in securing authority for new stock or bond issues from a number of states is particularly serious, in view of the fact that the company's financing must be postponed until all the States have given their consent.

(3) The cost of paying annual charter fees to the States through which the road is located is quite an item of expense that would be saved to a Federal corporation.

(4) A very great saving would be made in taxation by having the Federal tribunal fix the values of railway property for the purposes of State taxa-

tion. Upon the values so fixed the State taxing authorities would levy the same rate as they would impose on other tangible property within their respective taxing districts. This would also eliminate all the cost and expense which the carriers now incur each year by making out reports for taxing boards, and attending hearings, and prosecuting suits and proceedings for the correction of illegal assessments. State authorities are prone to place a much higher value upon the property of a foreign corporation than upon local property, for the purposes of taxation. This practice has become very unjust. In recent years a large part of the time of the Supreme Court has been taken up in investigating these evils and attempting to correct them. The case of Southern Railway Co. vs. Greene, 216 U. S. 400, and later cases further emphasize this habit, of which the following are in point:

Cheney Brothers Co. vs. Massachusetts (1918), 246 U. S. 147;

Lake Iron Co. vs. Wakefield

(1918), 247 U. S. 350; and many others decided at the same term of court.

The taxes on railways have increased so rapidly in the last three or four years that it has become a serious menace to the revenues of the carriers. The taxes on class 1 roads for the year 1917 increased over 1916 from $157,000,000 to $214,000,000, which was thirty-seven per cent. in one year, while the net operating income for the same period decreased $114,000,000, or about eleven per cent. With net revenues falling at the rate of eleven per cent. and taxes increasing at the rate of thirty-seven per cent. and operating expenses increasing twenty per cent., it is no wonder that railway credit is impaired. The taxes for 1917 were more than fifty per cent. of all interest requirements on the railway bonded debt, and the taxes were almost equal to all the dividends declared that year by these companies.

The following table of comparisons will show how absurd are the methods in vogue

for taxing railways. The N. & Y. & S. & W. Railway Company paid $172,000 in taxes, with its net income of $241,000; while the P. & W. Va. Railroad Company had a net income of $1,030,000, and paid $88,000 in taxes. The Great Northern had a net income of $23,021,000, and paid $6,297,000 taxes; while the C., M. & St. Paul paid $6,517,000 in taxes, and had a net income of $4,605,000:

Name of Company	*Miles*	*Net Income*	*Taxes*
Detroit, Toledo & Ironton	502	$163,000	$96,000
C. I. & W.	321	225,000	129,000
Ann Arbor	295	69,000	157,000
Atlantic City	177	195,000	153,000
Det. G. H. & M.	190	1,000	41,000
N. Y. S. & W.	135	24,000	172,000
K. & M.	170	1,158,000	280,000
L. & N. E.	296	896,000	230,000
C. T. & S. E.	374	501,000	235,000
Rutland	454	547,000	253,000
Cin. Northern	245	290,000	129,000
C. P. in Maine	233	55,000	114,000
Lehigh & H.	96	352,000	98,000
Monongahela	108	2,000	37,000
Port Leading	21	47,000	103,000
Atl. & St. Lawrence....	166	00,000	136,000
D. T. Short Line	80	291,000	95,000
Buffalo & Susquehanna .	252	657,000	112,000
Pittsburg & W. Va.	63	37,000	23,000
Port Reading	21	47,000	103,000

COMPARISON OF LEADING COMPANIES

Name of Company	*Miles*	*Net Income*	*Taxes*
Penna. R.R.	4541	$39,548,000	$9,612,000
N. Y. C.	6079	25,599,000	12,123,000
B. & O.	4723	8,095,000	4,455,000
N. Y. N. H. & H.	1905	2,404,000	3,336,000
P. C. C. & St. L.	2398	5,740,000	3,197,000
Erie	1989	1,820,000	2,377,000
Phil. & R.	1126	8,548,000	2,036,000
Union Pacific	3622	37,605,000	4,543,000
C. M. & St. Paul	10256	4,605,000	6,517,000
Chicago & N. W.	18108	17,125,000	5,677,000
Great Northern	8230	23,021,000	6,297,000
Northern Pacific	6522	29,502,000	6,910,000

Under Federal incorporation all these troubles of tax inequalities and excesses would be done away with and railroads would pay only their equitable share of taxation, along with other property. It is manifestly unjust that the people of Ohio and West Virginia should be compelled to pay a higher price for their transportation, in order to enable the carrier to meet excessive tax assessments levied by other States. Under Federal incorporation the carrier would have no concern with State authorities about

its taxes except to check over and verify the totals.

(5) The power of State Commissions to hamper and embarrass interstate commerce would be ended. All their power for evil would be gone while their experience and ability can be used to aid the national system of transportation instead of placing serious obstacles in its way as heretofore. Their activities will be greatly extended along lines that will be a strong support to the national system. They will hear the evidence and enter their findings in the first instance in most of the controversies that will arise affecting interstate commerce. Such cases of course will be subject to review by the Interstate Commission and in this way harmony of rulings and orders can be preserved. The State Commissions to all intents and purposes will be changed into national tribunals and governed by the Federal law of railway regulation in all matters that may come before them affecting interstate commerce. Federal incorpora-

tion of carriers is the only way by which State and Federal Commissions can be made to co-operate in maintaining a single unified system of transportation.

(6) A large number of States have reserved the right to their legislatures to alter or amend the corporate charters which they have authorized to be issued. And all the states, I believe, have provisions whereby the charters they have issued may be forfeited by appropriate proceedings.

The carriers are now all operating under charters granted by the States, which are subject to be amended or changed or even forfeited by State authority. They are the creatures of the State and the Supreme Court has decided that the State has the right to control them according to all the limitations and conditions of the law under which they were granted.

International and G. N. Rwy. Co. vs. Anderson County (1918), 246 U. S. 424;

Kansas City, &c. Rwy. Co. vs. Stiles (1916), 242 U. S. 111;

Railroad Co. vs. Maryland (1875), 21 Wall 456.

Under the reserved power to change or amend corporate charters a State Legislature could make such changes and amendments as would seriously jeopardize not only the integrity of their securities, but their power to perform their corporate functions. The Federal authorities cannot take this power away from the States, and as long as the carriers must operate under State charters, they will be under State authority so far as their corporate organization is concerned. The right to issue stock or bonds and prescribe the purposes for which they may be sold, and the price which they must bring, will be under the exclusive control and jurisdiction of the States.

Many and serious have been the threats made by State authorities to forfeit railway charters, and have receivers appointed to take charge of the property. A corporation chartered by one State will be permitted to do business in another State only by comply-

ing with the laws of that State respecting foreign corporations. These laws are generally very exacting and difficult to obey by carriers operating in several States. If the conditions are not strictly complied with the permit to do business may be withdrawn, and the carrier will become a legal outlaw, and although its line of railway extends from one end of the State to the other, it cannot lawfully do the business of a common carrier. These are not imaginary evils nor do they produce only imaginary troubles. As long as they exist they will be real obstacles and ever present menaces to the ability of the carrier to properly serve the public. Why keep these manacles on the carriers since they can do no possible good, and can only result in harm? Federal incorporation would remove every complication and perplexity that could possibly arise by virtue of State authority over State charters of incorporation.

POLICE POWER

(7) One of the most extensive powers that is possessed by the States is known as their Police Power. The full extent of this power has never been precisely defined by either State or Federal Courts. The Supreme Court has often named the general subjects that the State may deal with under the exercise of this authority, including such matters as affect the public health, the public morals and the general welfare of the people of that State. In the exercise of the Police power, State authorities are constantly obstructing the free flow of interstate commerce in their zeal to promote a purely local interest. They are imposing onerous burdens upon it that it should not be compelled to bear. The continually increasing conflict and turmoil between State authorities and those engaged in interstate commerce over the police power of a State to regulate that commerce, that the Supreme Court is flooded with these controversies. At the October term, 1917, of the Court,

it had to set aside the statutes and orders of six States on account of imposing illegal burdens on interstate carriers. At the next term the same court decided five cases involving the right of the States under the police power to control the activities of interstate railways in the discharge of their functions as common carriers.

As long as the railway companies continue to operate under State charters and are subject to the police power of the State, there must remain doubts and uncertainties as to the extent to which State jurisdiction may be exercised over interstate carriers. Under such conditions the States will continue to enact restrictive measures with the knowledge that the Supreme Court will set them aside if they are grossly oppressive. But this involves a long and expensive litigation, and often great losses to the carriers pending the legal proceedings to test the validity of the act. State Legislatures will continue to pass two-cent-fare laws without any investigation or knowledge of their

reasonableness, and leave it to the carrier to prove that such statutes are confiscatory.

It is claimed by many that the States and not the Congress have the exclusive jurisdiction over all purely intra state traffic. This claim will be conceded where the carrier does no interstate business. This situation can exist only where the carrier is purely intra state and handles no traffic that comes from or goes to a carrier doing an interstate business. The interstate business moved by an interstate carrier is directly affected by all the intra state traffic hauled over its line. The revenues derived from traffic moving from one State to anther are mingled with the receipts arising from carrying passengers and freight between points in the same State. Out of this fund the expense of operation and maintenance, as well as all other expenses, are paid. The same trains manned by the same crews move both State and interstate traffic indiscriminately. It is impossible to separate the service

or allocate the cost of conducting it. Any reduction in fares or rates on traffic between points in the same State is a direct and immediate burden upon the interstate passengers and shippers who must make up the loss in order to keep the carrier in a condition of efficiency. The Federal regulatory body must have the power to adjust the charges on both intra and interstate traffic that is hauled by an interstate carrier, to the end that unreasonable charges may not be imposed upon either class of business. This Federal tribunal can be depended upon to do full justice to the local rates and fares. There is no more reason to expect that this tribunal will impose discriminatory burdens upon local traffic than there is to expect a Federal judge to be unjust to the people of the State where he lives, simply because he is an official of the United States Government. Only by having both intra and interstate rates fixed by the same regulating commission or tribunal is it possible to work out any unified or

harmonious system of transportation.

The State traffic is so handled and mingled with the interstate business that the two classes supplement each other, and are part and parcel of the same general movement over a road whose lines and equipment extend from one State into another. Owing to the direct and immediate effect that State traffic has on interstate business and the agencies by which interstate traffic is conducted, there can be no question as to the power of Congress to regulate it. The most feasible method by which this can be accomplished is to give State Commissions authority to hear and determine in the first instance questions of interstate transportation with the right to appeal to the Interstate Commission and ultimate review by the National Transportation Court. In this way all controversies over a conflict of State and Federal authority could be determined in the most expeditious manner. If it should be decided that an order of the State Com-

mission was one over which the State authorities had exclusive jurisdiction, the Federal regulating bodies would not attempt to change or modify it.

In any legislation which Congress may enact respecting railways, there should be a section specifically defining and fixing the limits of State action, under and by virtue of its police power, affecting interstate transportation.

The States are entitled to know the extent to which they may go in the lawful exercise of their police powers over the instrumentalities of interstate commerce. The possession of this knowledge would put an end to a very great deal of legislation that the Supreme Court is called on to set aside, because of its violation of the Federal Constitution. In the act providing for Federal incorporation of interstate carriers, the Congress could place such limitation upon State action concerning these corporations as it might deem suitable for the public welfare.

TERMINALS

(8) In the immediate future railway managers must arrange for increasing on a large scale practically all railway terminals. This will be one of the first necessities that will confront them, no matter whether the government takes over the railways under a policy of government ownership, or whether they are to be turned back to the owners under a policy of government regulation. To extend and reconstruct the terminals so they will be adequate for the future growth of traffic will involve not only the expenditure of enormous sums of money, but will likewise require the acquisition of much property both public and private. As terminals are necessarily located in and near cities and large towns, the new tracks will have to occupy the public streets, parks and possibly other public property owned or controlled by the municipality. The difficulties of securing these properties from the municipal authorities will be many and serious if the carriers continue to op-

erate under State charters. The railway companies as now organized can secure the requisite land for new terminals only (1) by agreeing with the municipal authorities on the plan for the terminals, and the compensation for the right to occupy the streets and parks, and for taking the public property, or (2) by invoking the right of eminent domain to condemn the streets, parks and other public property. To adopt either one of these methods would be well nigh a hopeless task.

If the railway company should for any reason be compelled to condemn the property, it would be confronted with the most serious legal difficulties. The proceedings would be under State law and controlled by State statutes. The first question to be determined is, to what extent can property already devoted to a public use be condemned and appropriated to another and different public use? It is by no means clear that such a right can be exercised at all over the protest of the municipality owning

the property. Many of the State constitutions make provision only for the taking of private property for public use. Nearly all the States provide by statute that railways cannot occupy the streets and alleys of an incorporated town or city without permission of the council or other governing body. In such States condemnation proceedings would not lie to acquire the right to extend terminal tracks across any street or alley, and in such States the companies would be compelled to accept whatever terms and conditions the councils saw fit to impose. In many instances these would be prohibitive for one reason or another, and the carriers would be helpless. When such insuperable difficulties as these stand in the way of a great public improvement, which is necessary for the welfare of all the public, they should be removed. If the city of Chicago should refuse to permit necessary terminal tracks to occupy her streets, except upon ruinous terms, there ought to be some power that could

give the right of condemnation, for the terminal facilities will be for the use and benefit of all the people in all the States. Only the Congress can give such a power in the exercise of its jurisdiction over interstate commerce. The Congress cannot give the right of eminent domain to State corporations to take property which by the laws of the States that created them they are prohibited from acquiring. The only way in which the necessary streets and alleys and parks may be had for the purpose of constructing adequate terminals, is for Congress to require Federal incorporation for all interstate railways, and vest in these corporations the right to condemn streets and alleys and other municipal property sufficient for the purpose of constructing an adequate system of terminals. In the exercise of such right of condemnation, the interest of the city and its inhabitants can be amply safeguarded, so that they will suffer the least possible inconvenience.

In the past the carriers have been great-

ly embarrassed by State action in some cases, and lack of it in others, in their efforts to secure necessary capital. Federal authority has no control over stock or bond issues. That the States have in various ways placed burdens upon the carriers, and hindered them seriously in conducting their transportation does not admit of question. Owing to the fact that the carriers will be compelled to do a tremendous amount of financing, as well as increase their terminal facilities in the immediate future, the present lawful authority of the states over existing charter powers, and also over the power of condemnation, constitutes the greatest barrier in the way of establishing an efficient transportation system.

Transportation that will render the best public service must have but one central power of regulation. If the public is to obtain the kind of service that will best promote its welfare, it is essential that the carriers be not hampered in their activities and desires to give good service, but they

must be given a free hand for their initiative, and their power to render the most efficient service. The national authority only should exercise the power of regulating the carriers in the public interest, in all those things materially affecting interstate transportation.

TRANSFERRING EXISTING RAILWAYS TO FEDERAL CORPORATIONS

Assuming that Congress will provide for Federal incorporation, the question naturally arises as to the method whereby the Federal corporation will become the owner and possessor of the railways and property now belonging to the existing railway companies. The plan contemplates that the Federal corporation will not only take over all the property of the present companies, but will operate them in the future. In creating the Federal corporations the Act of Congress will vest in them the power to acquire these properties, and pay for them by issuing its own stock in exchange for the outstanding stock of the present corporations. It will likewise give to such corporations all the powers requisite to the purpose of carrying on the business of trans-

portation, including the power to raise money and condemn all the property needed in their enterprise. At the same time it is presupposed that the exercise of these extensive powers will be for the public welfare, and imposes a corresponding duty.

One of the problems to be solved is how to deal with the present holders of railway stocks and bonds. Upon what basis will these securities holders be asked to surrender them and accept in lieu thereof new securities or obligations of the Federal corporation? The whole matter will be greatly simplified by the Federal corporation issuing but one class of securities, and that would be common stock. It would give no mortgage or other liens upon its property, nor issue any preferred stock, except where such securities become imperative, and it would have the right to issue interest-bearing notes having the effect of a lien upon the company's property, for the purpose of extending or refunding maturing bonds. In the course of time all senior securities would be retired and the whole capitalization would be represented by one class of stock—the common.

BONDS AND OTHER OBLIGATIONS

The National Transportation Court would ascertain the actual value of all bonds and other evidences of debt calling for the payment of money at all events, by the existing corporations. To ascertain such values will not be difficult, nor can they jeopardize in any way the interest of the holders of such securities. Such valuation is for the purpose of fixing a basis of exchanging them for the stock of the Federal Corporation. In every case this stock will be surrendered in exchange for bonds and other indebtedness, at its par value. The holders of these securities will have the privilege of exchanging them for the Federal Corporation stock on the values fixed by the Transportation Court, but will not be compelled to do so. Whether or not they will make the exchange will be entirely in their discretion. To illustrate:

In a given case the Transportation Court would fix the value of a mortgage bond at ninety-five cents on the dollar. The holder could surrender his $1,000 bond for $950 of the stock of the Federal Corporation. On a minimum five per cent. dividend on the stock, the yield on his security would be $47.50. If the

bond were five per cent. interest, it would yield him $50.00. Which would he prefer to hold? The bond would be absolutely good, for its interest would be deemed a part of operating expense, and the Federal Corporation has assumed its payment upon maturity, besides it is a subsisting lien on the property. At maturity the holder would receive its face value. Both principal and income are fixed and cannot fluctuate. The bonds, however, are subject to taxes, which would reduce the income. On the other hand, the income on the stock is not fixed. It may be anything more than five per cent. but cannot be less. If the company should earn six per cent. the income would be $57.00, or $7.00 more than the bond interest. The chance of receiving a greater income, and thereby increasing the market value of the stock, would be an inducement to make the exchange. The stock would be accepted in lieu of the bond whenever the market price of the stock was above par. The stock would not be subject to taxes.

Under Federal incorporation the position of the bond holder would be greatly strengthened. Every element of risk would be removed. Loss could not occur. His lien over the property would still be preserved. His

mortgage contractual rights would remain unimpaired. The payment of the interest and principal would be certain. Under these conditions these railway bonds would be as stable as government bonds, and much more desirable, where bearing a greater rate of interest, as most of them do, unless the taxes on them were excessive. The obligation by the Federal Corporation to pay these bonds and their interest, would add much to their security as it is now under present conditions.

The importance of preserving the integrity and the value of railway bonds cannot be overestimated. The principal asset of the savings banks, insurance companies, trust companies and bank collateral and trust estates is made up of railway bonds, and any material depreciation in their value, or uncertainty of interest payments, would precipitate such a panic as would for many years cripple our whole industrial fabric. Already the present depression of railway credit is being keenly felt by those who are seeking new capital for industrial enterprises. On the 31st day of December, 1917, the Class 1 railways had $9,445,295,771 in bonds issued and outstanding in the hands of their creditors. No other element of credit is comparable to this in magnitude.

EXCHANGE OF STOCK

The Act of Congress creating the Federal Corporations will authorize them to acquire existing railway properties and pay for them by issuing its own stock therefor in exchange for the stock of the carrier companies now outstanding. Stock of the Federal corporations will be issued at par. An actual cash value will be fixed by the Transportation Court on the present stock of the carriers at which it will be surrendered and Federal Corporation stock at par will be taken in lieu thereof. The present stockholders will be precisely the same persons and institutions that will hold all the stock of the Federal Corporations. The only difference being that the par value of the Federal Corporation stock which they receive will not be the same in amount as the par value of the stock now owned by them, although the actual value will be the same. The process will be for the stockholder in the present corporations whose charters were all issued under State authority to exchange his stock for stock in the Federal Corporation. The stock he receives will have the same intrinsic value as that which he surrenders for it.

The present corporations will convey and transfer by appropriate deeds all their prop-

erty to the Federal Corporation which will have the same name. As a consideration for this property the Federal Corporation will assume the payment of all the obligations of the present company, and agree to pay them as they mature. In addition to the assumption of the payment of all the debts, the Federal Corporation will issue its stock at par to the stockholders of existing companies in exchange for their present holdings, the value of which would be determined by the Transportation Court. It would so operate that the same stockholders that now own and control existing companies would own and control the Federal Corporation, which would own and operate the same line of railway that is now owned and operated by existing corporations created under State authority. The stockholders of the present companies would exchange their State charters with all the handicaps that State laws throw around them for Federal charters freed from State regulation and interference, and without any hindrances whatever.

FIXING STOCK VALUES

A first impression may lead to the conclusion that the effort to place a real and an actual value upon the railway stocks now out-

standing, would encounter many difficulties. A consideration of the method proposed will correct this impression.

In the first instance the Transportation Court would ascertain the average market value of the stock by using certain periods (say June 30th for a number of years) as a test for the average. The same method, and the same dates, June 30, 1914, can be used that was applied in the Government Control Act, under which the Director General began the operation of the railways, January 1, 1918. In order to illustrate, we will take the Southern Railway as an example:

On the 31st of December, 1917, the Southern had outstanding $185,650,000 of stock. Assuming that the average value of the stock as shown by the test periods would be forty-five, the total value of all the stock on this basis would be $83,542,500. This amount would represent the prima facie actual value of the stock as of that date. The basis for this value of course would be the price for which the stock was bought on the stock exchange. As soon as this sum ($83,542,500) was ascertained by the Transportation Court the Federal Corporation would issue to the Southern stockholders its own stock at par to the same

amount, viz: $83,542,500, and the stock of the existing Southern Railway Company would be exchanged and retired.

In most instances it is claimed by stockholders in railway corporations that the stock exchange price is lower than the true and actual value of the stock. As a consequence these shareholders would naturally demand from the Federal Corporation more shares than the test average would give them. This claim would be fully met by the Federal Corporation giving to the stockholder a receipt showing the number of shares he had turned in and the number he had received in exchange therefor, and which would provide that if it should be found after a full valuation of the company's property thereafter to be made by the Transportation Court that the stock was worth more than the average price for which issues had been made, that new stock would be issued to the holder of the receipt to cover the increased value so found.

As to all the elements that should properly go into the sum that will represent the true value of railway property, no two well informed experts or economists have quite agreed. Some claim that the present value should be limited to original cost without in-

terest. Others say it should be the cost of reproduction, while still others claim that railway property should have the same corresponding increase in value due to the growth and development of the country as other real property, in addition to the money investment. That the same increment that enhances real estate values on account of increased population, both farms and city property, should be applied to railways. Value depends on earnings, and earnings on rates and rates upon public commissions. So complex is this whole subject of ascertaining the real value of railway property that the Interstate Commerce Commission has had the matter under consideration for the last four years and have reached no conclusion as to all the elements that should enter into it. This whole question of fixing the actual value of railway properties must finally be determined by the Supreme Court, when it specifies the elements of value that should be taken into consideration in reaching a just conclusion as to value, the problem will be solved, and then it becomes a matter of detail to work out. The Congress cannot lay down rules whereby railway values can be fixed, for this is not a legislative question but it belongs exclusively to the judiciary.

REORGANIZATION OF CAPITALIZATION

When we consider that the stock today (May 1, 1919) of all the railways belonging to Class 1, with the exception of only eight, is selling on the market at prices less than par, it becomes apparent that a readjustment of the stock issues is imperative. The values which the investing public places upon eighty-five per cent. of the stock of these companies ranges all the way from ninety-eight to ten cents on the dollar. The face value of this stock is in round numbers $7,300,000,000, while the present market value will not exceed $4,500,000,000. Of course the present market value of the stock is lower than its true value. An average value determined as heretofore indicated would, it is estimated, increase this present value to $5,000,000,000. If to this there be added the sum of $300,000,000, to represent the difference between the market price and the true and actual value, it would leave outstanding stock issues having a par or face value over the true value of $2,000,000,000. In other words, if the stock of the railway companies should be so adjusted that the actual value was represented by the par value, there would be $2,000,000,000 of this stock that

would be cancelled or written off as having no present actual value. However, the holder of this excess stock has an expectancy—in many cases a mere hope—that in course of time the growth of business resulting in increased earnings will give to this excess stock some value. It should be remembered that such increased earnings will be reflected in larger dividends on the lesser amount of new stock that will represent actual value in the first instance, and consequently would send the market value of this stock above par. It follows necessarily that with such a grade and character of stock the company can provide additional capital, on at least a par basis if not at a premium, as every dollar of stock issued would represent a dollar in cash that had actually gone into the improvement of the road and its facilities.

This plan contemplates a reorganization of the railways so far as their capitalization is represented by stock issues. It means that all existing stock will be replaced by new stock to be issued by the Federal Corporation, wherein the actual value will be equal in the first instance to the face value of the stock, and which in the near future will be selling on the market at a price above par. Most of the

railways have in the past gone through bankruptcy and receiverships, necessitating a complete readjustment of their capitalization. These reorganizations have operated to scale down bond issues even, so as to reduce interest or fixed charges, resulting in new mortgages, and a cancellation of outstanding bond and stock issues.

The following report illustrates the principles of reorganization as applied to the Boston and Maine Railroad. It will be a long while before the $49,000,000 of common stock can have any actual value for dividend purposes.

"B. & M. PLAN IS SUBMITTED

"Consolidation Scheme Is Worked Out by Railroad's Officials

"Boston, Feb. 25.—Hearings before the Public Service Commission on the petition for perfection of the plans for reorganization of the Boston and Maine Railroad in this State began to-day. Counsel representing the Boston and Maine Minority Stockholders Association said a long legal battle over the proposed consolidation of the leased lines might be expected. He requested that the hearings be postponed for two weeks, as he said the

railroad was 'in comfort under receivership.' The commission refused the request and counsel for the road began the introduction of evidence in support of the reorganization plan.

"Counsel for the Boston and Maine presented a plan for consolidation which he said had been worked out by officials of the road. Stockholders of the leased lines surrendering their holdings would get preferred shares in the Boston and Maine, with the stipulation that the interest rate should be the same in both cases. The unfunded debt of $18,000,000 would be cared for by an issue of bonds to be taken up by the Government through a mortgage proceeding.

"Operation of the lines under Federal control would be upon the standard rates of the last three years. For a period of five years preferred stockholders would get eighty per cent. of their dividends and holders of the common stock would receive nothing. The net income above the preferred dividends would create a trust fund through which the bonded debt would be cancelled. The commission took the proposition under advisement."

In reorganization plans the bankers have taken heavy discounts and commissions from the bonds, while receiving large blocks of bonus stock. The bankers, however, are not to be condemned for these profits for it was the only possible way at that time whereby the conflicting interests of senior and junior lien holders and stockholders could be harmonized, and the company rehabilitated with new credit and given the status of a going concern. One of the advantages that the proposed plan will have over the old method of reorganization will be the strengthening of all bond issues without in any way impairing their value or integrity, and giving to the stockholder a new stock possessing equal value with that which he now holds, upon which a minimum dividend of five per cent. is made sure and certain.

With the purpose of establishing a better transportation system for the whole country than the one we now have, the Congress with its committees on interstate commerce have been making investigations into every phase of the subject. A great many witnesses and experts have appeared before the committee and given their testimony and suggestions. The railways, the investors, the shippers, the employees, the State Commissioners, the In-

terstate Commerce Commission, and commercial and industrial associations and economists have sent their ablest representatives to offer plans and advise with the Congressional committees who are making this investigation. These witnesses have been gentlemen of long experience and conspicuous ability. In every instance the wisdom of the scheme or plan offered has been tested and analyzed by a thorough and searching cross examination, conducted by each member of the investigating committee of Senators and Representatives of the House. From the course this inquiry has taken it is evident that the committee has in mind certain fundamental and primary interests which must be safeguarded in any concrete plan they may adopt. This I think fully appears in the published reports of the hearings. These interests are:

(1) The public welfare.
(2) Interest of the employees.
(3) The investor.
(4) The corporation itself.
(5) Existing stockholders.

(1) THE PUBLIC WELFARE

Consideration for the general public interest must be the guiding principle upon which a

permanent and an efficient transportation system can only be established. This purpose will be paramount to everything else. If sectional bias or local self interest shall be permitted to color the deliberations of Congress into adopting a scheme for the readjustment of the railways, to the detriment of the public, viewed as a whole, it will fail almost as soon as it is put into operation. The public must be satisfied that the carriers under the reorganized system will perform the services required of them in the most efficient and expeditious way, and that the manner of doing these services will not result in excessive charges nor discriminatory practices. The public must be made to believe that the personal interest of employees, investors, corporations, and existing stockholders shall be subordinated to the public welfare whenever there is a conflict. The reason for this is apparent, in view of the fact that in the last analysis the public will pay all dividends, all wages and all expenses of operation. All these items, including profits, will be a tax upon the people, which they will have to pay. The public has been under the impression for many years that it is paying dividends on watered stock that originally represented no actual money invested

in the property, and they feel that this is an injustice. How much foundation there is for this belief, it is not necessary here to determine. The public does know, however, that Class 1 roads have outstanding approximately $2,000,000,000 of stock in excess of actual present value. This very fact creates in the mind of the average man the conclusion that there is something radically wrong in railway capitalization. Whether this notion is well founded or not, this frame of mind is a source of suspicion which must be removed before the public will feel that it is receiving a fair show. The public must have an abiding confidence in the plan that Congress shall finally adopt, and as a prerequisite to such confidence there must be proof that all "watered" stock has been eliminated. This can only be done by calling in outstanding stock and issuing in exchange therefor new shares based upon actual value, under the supervision of a Federal tribunal charged with this duty. The public want to know that they are paying dividends upon sums that represent the true worth of the property, and in such event there will be no effort to reduce rate schedules while dividends are under ten or twelve per cent. The public are much more interested in an adequate serv-

ice than in small dividends. In any and all events, the public must be satisfied with the plan, and made to believe that they can depend upon being served whenever service is required continuously and without interruption.

The public demands of Congress the establishment of a system of transportation that will be permanent, efficient and dependable. They realize that it must be so arranged that the carriers can earn enough money not only to keep out of bankruptcy, but to require an ample reward to investors and employees, as well as to provide all the requisite facilities. The public no longer entertains sentiments of malice toward the carriers, but on the contrary they demand the removal of every obstruction and unnecessary burden that has been placed upon them by State and Federal legislation. The public has committed itself to no plan or program of reorganization to submit to Congress. In view of the fact that there has been such a diversity of opinion among the experts who have appeared before the Commerce Committee, the public cannot be expected to develop a scheme of its own, but it must depend on the Congress to exercise its own judgment as to the plan that will best meet the public requirements.

THE INVESTOR IN RAILWAY SECURITIES

Those who buy railway stocks and bonds are controlled by human impulses. Sentiments of philanthropy and benevolence find a very small place in their calculations. The law cannot compel any one to purchase these securities. Every purchaser must be persuaded that it is to his pecuniary interest to exchange his money for them. There must be an inducement offered to him, in the way of an assurance that his investment will yield on the whole better returns than others that are open to him. Every one takes under consideration three factors in determining the course of his investments, viz: safety, certainty of interest returns, and prospective profits.

When the principal is represented by a stock or bond that cannot fall in value except in time of great national calamities, it would be deemed a very safe investment, and the investor would not apprehend any loss of principal. A stock that would have back of it the moral pledge of the nation, the sworn duty of Federal Tribunals vested with full authority, and the legal obligation of a railway, that the

stock of that carrier should be made to yield a minimum dividend of five per cent. per annum, would be accepted by the most cautious and critical as a certainty of paying at the very least a return of five per cent. per annum on the investment. In addition to the inducement of safety of principal and certainty of dividend there is presented the reasonable expectation of profit. The gambling instinct is inherent in most men, and they will risk more when there is a good prospect of receiving a profit over and above the ordinary interest returns. Before the investor can be tempted to purchase railway stocks at par it is necessary to inspire him with confidence in their permanent stability of value. He must believe that the annual income will be certain, and a profit is reasonably sure. As the investor will have to put up enormous sums of money in the next ten years in order that the carriers may properly equip themselves to handle the public's business, it is essential that the railways be placed in a position where they can offer him a security that will meet his approval. He must be satisfied that his investment is surrounded by every safeguard of protection. To secure from the investor vast sums of money in the immediate

future is a condition precedent to any reorganization of the railways that will enable them to render proper service. To provide the necessary capital is the first step to be taken, and the first question to be answered is what kind of security will be most tempting to the investor?

The stock will represent a real and actual value, it will pay a minimum dividend of five per cent. on that value, and will carry with it a probability of a good profit. These peculiar features will meet every possible requirement of the most conservative investor.

The stock should be made still more attractive by exempting it from all taxation. Banks should be authorized to make loans on the stock as collateral amounting to ninety-five per cent. of its par value. All those who are required to execute bonds to the United States should be permitted to use the stock as security for the performance of the bond. So far as Congress has the power it should make the stock a proper investment for savings banks, trust companies and insurance companies. In addition to the inherent value of the stock, legislation can add much to its desirability.

In order that the stock may be free from all doubts and complications that could cast

suspicion upon its value, its issues, in every instance, would be approved by the Transportation Court, which would be a guaranty to the investor and the public that the face value of the stock had gone into the improvement of the property. The most prudent purchaser would not be called upon to find out how many bonds were outstanding, the size of the earnings on the probability of not paying dividends. The law would take care of all these inquiries, and there would never be a railway stock traded in on the stock exchanges for less than par. As it is now, with eight or nine exceptions, all the railway stocks are bought and sold at a price much below par. Under the present regime a purchaser of stock takes a serious risk of a fall in price attended by consequent loss. It is this element of risk, which is very real,—that has driven the price of stocks down to their present low levels. The more power exercised over the carriers by State authority, together with the hampering legislation of Congress, the greater will be the risk, and consequently the difficulties of selling new stock at a fair price will continue to increase.

The present statutes, both State and Nation, give the investor neither protection nor en-

couragement. They look upon him as a legitimate object of prey, and they have proceeded to prey upon him. Not in a decade has there been any statute passed that did not increase the carriers troubles and add new charges to the cost of operation. Every act has been punitive in its purpose and effect, and has tended to decrease the power of the company to earn dividends for its stockholders. To this cause more than to all others combined may be attributed the present condition of our railways. By virtue of the power of regulation exercised by both State and Federal Governments the railway shareholder has seen the value of his stock shrink from day to day, until in most instances he could not now sell it for more than fifty per cent. of what he paid for it. During this decade we have had a general prosperity much above normal (with the exception of 1915)—in which every one shared, except the investor in railway stocks. He knows what adverse legislation has cost him. He is aware of what it can do, by what it has done. He is not buying railway stocks now save at ruinous prices to the seller. He will not purchase again under existing laws. Yet the railways are compelled to get from him in the immediate future billions of dollars of

new money. There can be no progress made toward establishing an efficient transportation system until State laws of regulation are superseded, and the restrictive legislation of Congress is repealed. With his past and present experience he will not invest in railways until he is assured that the investment is safe, the income certain, and a profit reasonably sure. This is not an unreasonable position because it is one that he is justly entitled to take.

THE PRESENT STOCKHOLDER

Any investment that results in shrinkage of value and consequent loss is unfortunate. The investment itself may have been induced by excess optimism, lack of knowledge of true values, or poor judgment. And in many instances purchases have been made as a speculation pure and simple. Whatever happened to be the inducement for the venture the present holder of railway shares finds that the actual value of the shares is probably sixty per cent. of their face value, and much less than what he paid for them. Among the leading railways there is now a wide margin between face value and market value of their stocks, as shown by the quotations from the stock exchanges. In Class 1 roads the par value of the

stock is about $2,600,000,000 more than the present market value. This difference must be adjusted so that the par value will not be greater than the actual value. This readjustment cannot be made without the present shareholders suffering what may appear to be losses. There can be no loss in the readjustment as the loss has already been incurred. The purchaser who paid seventy for his stock a few years ago could not sell it now for more than fifty or fifty-five. And unless there is an equitable reorganization and the carriers put upon a sound financial basis, bankruptcies are sure to follow, and his stock will continue to decline and its value may be practically extinguished through receiverships and reorganization.

The responsibility for this vanishing stock value is due primarily to a faulty system of railway financing and capitalization. But it must be remembered that it was the only method by which capital could be secured, at the time, with which to construct new lines and extensions. By an equally faulty system of governmental regulation, both State and National, the railways have not been permitted to increase their earnings to the point that would strengthen their credit, and thus have

the ability to obtain new money and thereby maintain the value of their stocks. The condition that confronts the present stockholder is a serious one indeed. He realizes that if the railways are to continue to operate under State charters in the future, they can only secure new money by selling bonds or some other form of security that will be superior to his stock. He knows that vast sums of new money must be provided at once in order that the railways may discharge their functions as common carriers, which will necessarily operate to further depress the value of his holdings. The question for him to consider is how can he save something and be protected from the impending wreck? To this question there can be but one answer; and that is, scale down the par value of his stock until it will represent the actual value of the property owned by the carrier, so that his future holding will be a dividend paying stock at all events, with a reasonable expectation of some profit. He cannot complain of this adjustment for it will not only stop future losses, but will give him a reasonable return upon the value of the property used in conducting transportation, and by implication he is not entitled to more. The public cannot be heard to complain of this ar-

rangement for the court has said that justly they should pay such reasonable return.

It may be thought by some that it is particularly unfortunate that existing stockholders should suffer losses. Quite true, but the public should not guarantee the purchaser of stock against loss, and if he is the victim of the present situation it cannot be helped; but the suggestion, made by this plan is that he will not continue to be oppressed, and will be saved from further loss.

The effect that this adjustment will have on rates for the future cannot be determined with much certainty owing to the increased expense of operation and maintenance. But the practical workings of the plan can be illustrated by applying it to Class 1 roads for the year 1917. In round numbers—which I will use—the aggregate outstanding stock of these railways on December 31, 1917, was $7,352,000,000. Their net income was $589,044,000, or eight per cent. on the capital stock. The dividends amounted to $221,482,000, being three per cent. on the stock. After making $70,000,000 of special appropriations there was a surplus of $295,286,000 transferred to profit and loss. The proposed plan would give to the stock a value of seventy, which is liberal, and would

make outstanding stock amount to $5,146,400,000. The earnings of the companies on this stock would be $589,044,000, or eleven and four-tenths per cent. The dividend on this stock at five per cent. would amount to $257,320,000, which when paid, would leave a surplus of $331,680,000 for special appropriations and profit and loss of six and four-tenths per cent. This illustration takes no account of the great savings that would be made in the way of taxes, license fees, cost and expense that are now imposed by State authority. All such savings would go to swell dividends and increase surplus earnings without increasing rates.

The ultimate effect of this plan of recapitalization will be to reduce rates and keep them steady at a generally lower level, and at the same time place the investors security upon a safe basis where the fluctuations in value will be reduced to the lowest possible minimum. The tendency will be toward increasing values of the stock, and a consequent movement toward lower rate levels.

It is impracticable for the carriers to do any new financing by selling stock when the outstanding issues are selling in the market at a price far below par. If it could be sold at

all,—and in most cases it could not,—it would have to be placed at such a discount that it would greatly increase the par value over the actual value and add to the burden which the public would be expected to bear in the course of time. One of the Senators of the Interstate Commerce Committee apropos of this question said: "We ought to relieve the people of the country of the excess capital charge, if we can do it in fairness to capital, and at the same time preserve efficiency and economy in operation." This expresses, not only the sentiment of members of Congress, but the universal feeling of the public.

Excessive capitalization will always exercise an evil influence in any system of transportation that may be adopted.

ANALYSIS OF THE SECURITIES HOLDERS' PLAN

On the 31st day of January, 1919, the National Association of Owners of Railroad Securities, speaking through their President, Mr. S. Davies Warfield, filed with the Senate Interstate Commerce Committee a carefully prepared plan for the financial reorganization of the railways. It would probably be a little more accurate to say, a plan for future railway financing. Any suggestion coming from so respectable a source as this is entitled to receive serious and earnest consideration. It may be taken for granted that while these gentlemen represent primarily the interest of investors in railway securities, they have likewise kept in mind the public welfare in the plan which they present. It is with this feeling that they will welcome any suggestion from the standpoint of the shipper, that may tend to strengthen the securities which they now own, or which they may purchase of new issues, that I venture to make an analysis in the way of recommendations concerning some of the matters which they urge.

The first of the "Fundamentals" of the plan submitted is:

(1) "A minimum rate of return on the *property investment* in the railroads, fixed by Act of Congress, through rates adjusted as occasion may demand, in order that the securities of the railroads may be stabilized and their credit established on a basis necessary to secure the money to provide the shippers and traveling public adequate facilities and service."

This is a very clear statement of a general principle which, if incorporated into the plan that Congress will adopt, will practically solve the problem of a proper reorganization of railway finances. But before it can be accepted as a whole the dominant assumption needs interpretation. It provides for "a minimum rate of return on the *property investment.*" Instead of requiring a return on "property investment" the requirement should be a minimum return on the *value of the property* used in conducting the transportation. The difference between "property investment" and actual value of property used is very great. This can be best illustrated by a concrete example.

At the end of the year 1917 the Seaboard Air Line reports to the Interstate Commerce Com-

mission showed that the company had a property investment of $192,423,000. Also that this company had outstanding $131,483,000 in bonds and long term debt and $60,950,000 in stock, making its capitalization $192,433,000. Property investment includes all stock and bonds at their face value, or par. A minimum rate of five per cent. on property investment would not be too much, and therefore the minimum return to the security holders of the Seaboard Air Line would be five per cent. on $192,544,000—the property investment, which is $9,627,200. If we look to the actual value of the property as a basis for dividends, and fix that value at the face value of the bonds, plus the market value of the stock we will have $131,483,000 of bonds, and the market price of the stock which is eight, giving a stock value of $4,807,600, which gives a total value of the property at $136,290,600, that would yield a minimum of five per cent., or $6,814,530. The difference between what the public would be required to pay on "property investment" and actual value of the property is $2,712,770. On this same basis of calculation, the public for 1917 would have paid $130,000,000 minimum dividends upon stock in Class 1 roads that had no actual or market value whatever.

In view of the results that would follow a requirement of a minimum dividend on "property investment" instead of actual value, I would respectfully suggest that the first fundamental of the plan be amended by striking out "property investment" and inserting "value of property used in conducting the transportation." If the words "property investment" are to be retained the proposition will become so palpably unjust and burdensome that I believe the Congress would never enact it into law.

The time has come when the railways should be capitalized on a basis of actual values, if their credit is to be established and maintained. If the public could speak it would certainly demand that it be saved from paying incomes on excess values, and after all the public must believe that it is receiving a fair measure of justice as a condition precedent to the success of any plan that may be evolved.

The only feasible method of reorganizing railway capitalization whereby excessive stock issues may be superseded by stock that has an actual par value is by Federal incorporation.

But the plan proposed by the National Securities Holders Association opposes Federal

incorporation and gives the reasons in support of its opposition, as follows:

(1) "The principal purpose thereof (Federal incorporation) seems to be the obliteration of State Commissions."

This statement does not give the full purpose of Federal incorporation, nor is it accurate when it assumes that "the purpose is to obliterate State Commissions." The necessity for Federal incorporation is to remove from the States the power to hamper and place undue burdens upon Interstate Commerce. This inhibition would apply to all State tribunals, including legislatures commissions, taxing boards, and all other State authorities vested with power to restrict or interfere with the easy, natural movement of commerce between the States. This commerce should be freed from every hindrance, not necessary for the general public welfare. No State should be permitted to use its power to work discriminations in favor of its own citizens, and against the general public. This authority of the States over their own railway charters—to change, amend and revoke—gives them the undisputed right to regulate and control the issuance and sale of securities by the railways, and consequently all railway financing

is dependent upon and subject to the will, the whim or caprice of State tribunals. Every rate or charge prescribed by State authority directly and immediately affects all the revenues of interstate carriers, and the regulation of the operation of trains adds to the expense, and is a drain upon the sum of its earnings. Every reduction of rates on shipments between points in the same State, together with increased expenses imposed by State authority lessens the value of the stocks and bonds of the railway, and makes these securities less stable and less trustworthy.

The Obliteration of State Commissions

It is not apparent that the advocates of Federal incorporation expect that State commissions will be discontinued. There is no reason why they should be done away with under Federal incorporation. On the contrary the State Commissions should form a part of the Federal scheme of regulation. They will co-operate with the Interstate Commerce Commission. They will in the first instance hear and determine most of the controversies between the carriers and shippers arising within their respective States. This jurisdiction will extend to both interstate and intrastate traffic,

subject to review by the Interstate Commission. All their judgments and orders concerning purely intrastate matters that do not affect interstate business will, of course, be final, while their orders involving interstate business may be corrected by the Interstate Commission. On the record made by the State Commission—The Interstate Commission will act as an appellate tribunal, and will determine its own appellate jurisdiction depending on whether the order appealed from affects interstate commerce, or is purely intrastate in its operation, in which latter event the order of the State Commission would become final. This method of procedure will insure a well defined system of transportation upon which both the carriers and the public may rely. By this method of co-operation between the State and Interstate Commissions many advantages will be obtained, such as—

(a) Eliminating most of the examiners for the Interstate Commission.

(b) A speedy hearing before a local tribunal, possessing an intimate knowledge of local conditions and having a wide experience and extensive expert knowledge of transportation problems.

(c) The remedy for errors and mistakes is through appellate process to the Interstate Commission, thereby relieving the parties from a long and expensive litigation in the courts, on a new record and original testimony.

(d) It will preserve the harmony of a general transportation system, by removing the conflicts that arise between the exercise of State police power, and the power of Congress over interstate commerce.

(2) Another objection to Federal incorporation is: "It means turning over the properties to the Government under an Act of Congress that, to obtain the object sought by those advocating it, shall completely surrender rights now possessed by their owners, the release of which might eventually prove suicidal to them."

There are so many vital things assumed in this statement that they must be examined separately in order to appreciate their full significance.

(a) Federal incorporation—"means turning over the properties to the Government under an Act of Congress." This statement shows a misconception of the whole scope of

Federal incorporation. The carriers are now operating under charters granted by State authority. Federal incorporation means that they would operate under charters granted by Federal authority. The corporate powers of the companies would be practically the same. The company would be owned and controlled by identically the same stockholders. The property would be the same, and the management would be the same. So far as the property of the company is concerned the Government would have no more control over or interest in it than the States do now. The Federal regulating body would have, however, the right to require a board of directors to remove an executive officer on the ground of inefficiency but for no other cause. A moment's reflection makes it apparent that there would be no turning over to the Government the present property of the railways. But the property would be turned over by one corporation to another having the same stockholders with the same control and management. The stockholders would be turning their own property over to themselves, freed from the incubus of hostile State action, which has and would continue to decrease the value of their securities.

(b) That "to obtain the object sought by those advocating it" (Federal incorporation).

If those who advocate Federal incorporation have any other object than to place the railways upon a safe and sane foundation, it has not been disclosed by the hearings held by the Senate Interstate Commerce Committee, nor is it to be found in the plan submitted by the Securities' Holders Association. It may be assumed that the proponents of Federal incorporation believe that it is the only method by which excess capitalization can be reduced to the point where the capitalization will fairly represent the true and actual value of all the property used in conducting transportation. They also believe that this is the only course to pursue that will enable the carriers to establish and maintain the credit necessary to supply themselves with needed capital. They do know that the adoption of this policy will be eminently just to the public, and will insure to the investor—both present and future—an adequate return upon all the values he may have put into the property. It will likewise give assurance to the public that they will not be called on to pay dividends on stock that represents no real value whatever.

(c) "Shall completely surrender rights now possessed by the owners, the release of which *might* eventually prove suicidal to them."

It will be presumed that the author of this paragraph had in mind the rights of securities holders when he speaks of the rights of the "owners," as the securities holders are considered to be the owners of railways, although technically this is not strictly accurate, yet it is true in substance.

What are the rights "now possessed by the owners" that they will have to completely surrender? There can be but one right which they will be called upon to surrender, and that is the right to operate their railways under a charter issued by the State instead of one granted by Federal authority. Rights incorporated in State charters can be no more favorable to the securities holders than kindred rights contained in Federal charters. The Congress can authorize a Federal charter that will be infinitely more attractive and valuable to the stockholder than the States can possibly do, without changing their constitutions. As an example: The States, generally speaking, prohibit railways from appropriating public property, streets and alleys, without the consent of the municipality wherein they are lo-

cated. The Congress can give its corporation the right to condemn and occupy streets and alleys, without the consent of any State authority, municipal or legislative. In view of the necessity of building new and extensive terminals in practically all the cities and large towns, the right of the railways to secure the requisite ground for this purpose, becomes at once of the most vital concern, not alone to the stockholders but to the general public as well. The possession of the right to condemn and occupy streets and alleys with terminal tracks, by the carriers will save to them and their securities holders hundreds of millions of dollars in the next few years.

It must be presumed that Federal incorporation means that these corporations will be granted every power necessary or expedient to better enable them to give the public an efficient service.

Whatever surrender of property rights "now possessed by the owners" which they will be required to make, they will be simply surrendering these rights to themselves. There will be no right lost in the process of surrender, but additional rights and powers of tremendous importance and value will be obtained.

If this paragraph means that the rights "now possessed by the owners" are the rights that pertain to securities holders as such, and not the rights belonging to the property owned by the corporation, it will be necessary to consider such rights as arise out of the contractual obligations of the corporation, and also the right of the stockholder, for they divide themselves into two separate and distinct classes.

Contractual obligations are the evidences of debts owed by the corporation, which it has given its written promise to pay. These are bonds secured by mortgage over the property or its income, and notes usually secured by collateral. The holders of these securities are creditors of the company, and as a class have no interest in the future earnings, except as they tend to strengthen or lessen the security of their holdings. All the right possessed by this class of owners is the right to have their debts paid, as they mature. But Federal incorporation can in no wise lessen or impair this right. The lien over the property to secure their payment will not be disturbed. All their mortgage rights will be preserved. The Federal corporation will assume the payment of all these obligations when it takes over the

railway. This class of securities will not be surrendered or parted with by their holders. They will be greatly strengthened as the earning of a five per cent. dividend on the stock presupposes that the earnings will be sufficient to provide interest payments and take care of the contractual obligations as they mature. It follows that the requirement of a surrender of rights contained in the statement can only refer to the rights of existing stockholders.

The stockholders possess the right to manage and control the business and affairs of the company through a board of directors which they select from among their own number. They also have a right to the profits which the company earns after the payment of fixed charges and the expense of operation. Under Federal incorporation the same stockholders would, in precisely the same way, manage and control the affairs and business of the company, as they exercised under State charters, and this right would in no sense be impaired or restricted, or surrendered. The same is equally true of their rights to all the profits earned by the company after paying expenses and fixed charges. The wealth and income of the stockholder is enhanced by increased net

earnings. Net earnings will be increased in proportion to the saving in the items of expense. The maintenance of corporate organization under a State charter is very expensive, while there would be no expense attached to corporate organization under Federal law. State action also decreases gross income, and adds to the expense account. The management of the railway would be the same whether operated under State or Federal charter, and the profits or net earnings arising under Federal incorporation would be much more than if operated under a State charter. The quantity of outstanding stock cannot affect net earnings unless there is so much excess capitalization as to impair the credit of the company, in which event it would have a depressing effect on profits. Under Federal incorporation the stockholders would receive more profits than under State charters. There is a contingency, however, which could arise whereby the present stockholder would receive more profits than he would realize by surrendering his present holdings in exchange for the stock of a Federal corporation. That contingency could arise in those cases where the present market price of the stock would range from eight to thirty cents on the dollar

of the par value. Such carriers now have an excess capitalization of fifty to sixty per cent. as represented by their outstanding stock. If some device can be contrived that will give a value to this excess stock,—which now has none—it will enure of course to the benefit of those who own it. This can only be done by collecting enough revenue from the public to give it a value that would make it marketable. What right, either legal or moral, has the holder of such stock to have the public taxed for his enrichment? He cannot claim that he has any legal right to impose this burden, for the courts have time and again ruled that his legal right is limited to a reasonable return on the value of the property used in conducting the transportation. This excess capitalization represents no property values whatever, and therefore he can have no legal right to a return or income on a stock having no value. The courts have intimated without so holding that six per cent. is a reasonable income or return to the investor on the value of all the property used by the carrier in conducting its transportation. As a consequence the only right which might be invaded by a surrender of this valueless excess stock is one based upon purely moral considerations. The argument might

be made by the holder of this stock that he bought it at a time when prudent men believed that it was well worth the price paid for it, and constituted an attractive investment. But by an unwise exercise of the power of regulation, both State and National, the value of the stock has been reduced, entailing consequent losses. And, as the representatives of the public are primarily responsible for his loss that there is a moral obligation upon the part of the public to make him whole. That through no fault of his he now finds himself between the upper and the nether millstones. It may be urged in answer to this argument, that he purchased the stock with his eyes open—he had full knowledge of the power of State and Nation to so regulate the railway as to impair its ability to earn dividends on its stock—he trusted to the wisdom of his co-stockholders to so manage the company's affairs as to protect his purchase—he knew that in every investment there is a large element of risk—the risk he took must be increased or diminished by an infinite variety of unforeseen circumstances —he was cognizant of the fact that Government has exhibited no ability to manage or regulate industrial enterprises with economy and efficiency—that wherever Government has

laid its hands upon the railways the result has been increased expense and lower net income. The fault does not all lie with governmental interference, however. The custom of issuing excess stock in the policy that has heretofore characterized railway financing was sufficiently well known to put him upon his guard. He should have seen that the tendency of railways generally was toward more drastic regulation, lower net earnings and a decided impairment of railway credit, all of which were contributing to lessen the value of outstanding stock. In view of these well-known conditions how can it be contended that there is a moral obligation upon the part of the public to guarantee the stock purchaser against loss in making an imprudent bargain?

The inevitable conclusion is that the rights, both legal and moral, now possessed by the owners of this stock when surrendered to a Federal corporation, can in no wise affect them prejudicially, nor can such a turning over "eventually prove suicidal to them."

Another objection to Federal incorporation presented by the security holders is:

"Endless litigation would ensue, in which the States would participate, to contest the abrogation of *their right to exact the perform-*

ance on the part of railroads of certain obligations assumed by them as conditions imposed in return for franchise rights that had been granted to them by the States."

This argument presents the question as to the policy of having Interstate Commerce regulated by Federal authority alone or shall the States have an independent concurrent jurisdiction over interstate transportation along with the Federal power? The argument goes much further and assumes that the States should have and exercise exclusive jurisdiction over all railway financing; that it would be the sole function of the States to control, prohibit or allow all stock and bond issues and prescribe the terms upon which these issues may be sold, and naming the purposes for which the proceeds may be used. It requires no argument to prove that this exclusive power over railway financing which the States now possess, has done more to destroy railway credit, and embarrass railway operation, than all other causes combined. To show what an evil this is it is only necessary to refer to the experience of every railway that has had occasion to do any considerable financing in the last fifteen years. The New York, New Haven and Hartford is a conspicuous example. To

remove from the carriers this great menace of State regulation of their financial operations is one of the principal reasons that make Federal incorporation a necessity. Every obstacle that stands in the way of establishing and maintaining a high degree of railway credit must be removed before it is possible to provide an adequate transportation system. To ask that the present power of the States over railway financing be preserved is to ask that all the evils growing out of it be not only continued but greatly augmented in the future. Railway operation in the past decade has demonstrated and brought to the fore evils and mistakes from which all transportation has been greatly hampered, and the public welfare has suffered. It is the duty of Congress to enact such legislation as will relieve the public from these burdens, by placing our transportation upon a safe and sane basis. This can only be done by centralizing all regulatory authority in one Federal scheme with one Federal tribunal over all subordinate boards or commissions. The plan suggested herein contemplates the co-operation of all the State Commissions as part of the Federal organization. The jurisdiction of the State Commissions over purely intrastate rates and

practices, where they do not affect interstate traffic, will in no sense be impaired. At the same time they will render great aid to the Interstate Commerce Commission on practically all questions of interstate commerce.

To the claim that endless litigation would grow out of a policy of Federal incorporation an answer can be made. The statement itself can only be predicated upon conjecture. While litigation is always a possibility, as there is no power to prevent any one from instituting a suit, yet what are the probabilities that such litigation would ensue? Who would bring such a suit, a stockholder or the State? We have already seen that the stockholder would have no legal right that would be impaired or threatened by exchanging his stock in a State corporation for stock of equal or greater value in a Federal corporation owning and operating the same property. Therefore he could not maintain a suit as he could show no loss of a property right. Of course he would not bring a suit to maintain a moral right even if such a right existed. The State as a stockholder would have the same status as an individual stockholder and could not succeed in a court. If a State should bring a proceeding to compel the corporation which it has chartered to

perform the conditions of the charter the answer to the suit would be that the corporation's business was an interstate carrier over which the Congress had exclusive jurisdiction and regulatory power. That the Congress, by appropriate act, had required it to cease doing an interstate business, or anything affecting interstate commerce, and to turn over to the Federal corporation all its property and instrumentalities used in connection with conducting interstate transportation. That under the Federal Constitution such Act of Congress would be the supreme law of the land and must be obeyed regardless of State laws to the contrary. This answer would be complete and the suit would be dismissed. Another reason why the States would not go into litigation would arise from the fact that Federal incorporation would give the citizens of each State a much better transportation system than it would be possible for the States to provide. The general welfare of the people of each State would be greatly promoted by Federal incorporation, and no State would be tempted to take a step in opposition to the best interest of the people of that State. In view of the reasonable certainty of the failure of any litigation undertaken to resist the carrying out

the policy of Federal incorporation, it is inconceivable that any State or stockholder would embark in such an enterprise.

Existing State Authority Over Interstate Railways Condemned by the Supreme Court

"The interblending of operations in the conduct of interstate and local business by interstate carriers is strongly pressed upon our attention. It is urged that the same right of way, terminals, rails, bridges, and stations are provided for both classes of traffic; that the proportion of each sort of business varies from year to year, and, indeed, from day to day; that no division of the plant, no apportionment of it between interstate and local traffic, can be made today, which will hold tomorrow; that terminals, facilities, and connections in one state aid the carrier's entire business, and are an element of value with respect to the whole property and the business in other states; that securities are issued against the entire line of the carrier and cannot be divided by states; that tariffs should be made with a view to all the traffic of the road,

and should be fair as between through and short-haul business; and that, in substance, no regulation of rates can be just which does not take into consideration the whole field of the carrier's operations, irrespective of state lines. The force of these contentions is emphasized in these cases, and in others of like nature, by the extreme difficulty and intricacy of the calculations which must be made in the effort to establish a segregation of intrastate business for the purpose of determining the return to which the carrier is properly entitled therefrom.

"*But these considerations are for the practical judgment of Congress in determining the extent of the regulation necessary under existing conditions of transportation to conserve and promote the interests of interstate commerce.* If the situation has become such by reason of the interblending of the interstate and intrastate operations of interstate carriers, that adequate regulation of their interstate rates cannot be maintained without imposing requirements with respect to their intrastate rates which substantially affect the former, it is for Congress to de-

termine, within the limits of its constitutional authority over interstate commerce and its instruments the measure of the regulation it should supply. It is the function of this court to interpret and apply the law already enacted, but not, under the guise of construction, to provide a more comprehensive scheme of regulation than Congress has decided upon. Nor, *in the absence of Federal action,* may we deny effect to the laws of the state enacted within the field which it is entitled to occupy *until its authority is limited through the exertion of Congress of its paramount constitutional power.*"

Geo. T. Simpson vs. David Shepard, 33 Supreme Court Rep. 729.

In the foregoing Minnesota rate case the Supreme Court has pointed out the serious difficulties that hinder the railways in dealing with State authority over interstate carriers. The court has said as plainly as it is permitted to say, that these complications must continue until Congress takes from the States the power they now possess over interstate commerce which can be exercised indirectly. This statement of the Supreme Court is the strongest possible argument against leaving the car-

riers subject to state control; and is therefore a complete answer to the position taken on this proposition by the National Association of Securities Holders.

REGIONAL DISTRICTS

The plan of the securities holders contemplates dividing up the whole country into six Regional Districts, which would include a railway mileage ranging from 34,000 to 50,000 miles in each district. The object of this districting is to provide aids and helps to the Interstate Commerce Commission in its duties of regulation. New commerce commissions of three members would be appointed by the President for each of these districts, and the appointees would be recommended by the two political parties. As an aid to the Regional Commissions rate committees shall be appointed upon which the railways and the shippers shall be represented.

It will be seen that the creation of six new commerce commissions, supported or opposed as the case may be by six rate committees which are separate and distinct tribunals, will add very greatly to the machinery for regulating interstate commerce.

The objection to this regional plan is (1) That the new Commerce Commissioners will be selected by the Executive Committees of the political parties. These selections will be made—judging the future by the past—upon purely political considerations, without reference to fitness or qualification for the particular duties to be performed; (2) It would introduce so many complications and untried experiments in the regulatory scheme that it would take many years, (a) to train the new commissioners and (b) determine their proper functions and provinces; (3) By the process of appeal it would add to the overburdened Interstate Commission rather than relieve it of some of its duties; (4) The machinery of it would be complex and cumbersome; (5) The State Commissions are, generally speaking, trained experts in transportation matters, having had wide experience in dealing with all these problems. These commissions already organized and fully equipped with expert knowledge, and familiarity with local conditions, can do everything that is possible for the Regional Commissions to do in much shorter time and giving the work a vastly superior ability. They can also pass upon and determine purely intrastate matters, some-

thing which the regional commissions cannot do. The State Commissions can and should be representatives of both State and National laws in regulating commerce. With the process of appeal to the Interstate Commission there would be no conflict between State and Federal jurisdiction, and a system of transportation unified and harmonious would necessarily result.

As between the proposition to create regional districts and supply them with a lot of new and untried machinery as necessary helps to the Interstate Commission, and the plan to secure the co-operation of the State commissions as part of Federal regulation machinery there can be no question as to which would yield the best results.

The Securities Holders plan further provides:

"That no railroad shall build new mileage unless it shall show the necessity for it * * * * and shall receive the sanction of the State commissions of the respective States having jurisdiction."

The unfortunate experience that the railways have had in this respect with the Texas and other State commissions, affords a complete answer to this proposal. If the Chesa-

peake & Ohio Railway Company should desire to build new mileage in Illinois to provide for the traffic offered to it in that and other States, it would be compelled to obtain the sanction of the Commissions for Virginia, West Virginia, Kentucky, Ohio, and Indiana, as well as Illinois. Each one of these Commissions would look at the proposition from a different angle, and from their own local point of view. It must be remembered that the people of every other State in the Union whose goods would be handled over C. & O. tracks are as much interested in the facilities for the transport of their commodities by this railway as are the people who live in the States where these facilities are located. This becomes a national question exclusively, as all the people are directly interested. It follows that this predominant national interest should not be controlled by State action, but should be under the sole jurisdiction and regulation of Federal authority.

There is no real reason why the States should control extensions, construction of new mileage or the acquisition of greater facilities upon the part of the railroads, but on the contrary there is every reason why they should not do so.

EXCESS EARNINGS

In order to dispose of excess earnings the following is suggested by the Securities Holders, viz:

"If any of the railways shall earn a rate of return in any one year greater than six per cent. * * * the excess shall be devoted to the following purposes:

"(a) Thirty-three and one-third per cent. shall be set aside as a fund to be used for the benefit of the employees under the plan;

"(b) Thirty-three and one-third per cent. of such excess shall be returned to or retained by the railroad company for its own use;

"(c) Thirty-three and one-third per cent. shall be held in the fund to be devoted to the purposes provided under the plan and under the direction of the regional commissions, or Interstate Commerce Commission."

There is very good reason for the belief that the Senate Interstate Commerce Committee are greatly concerned over the matter of widely divergent earnings of those carriers who operate parallel competing lines of railway between common points. The four railways operating between New York and Chicago are compelled to have the same rates and fares between all common and competitive

points. No two of the roads have the same transportation expense, and as a consequence their earnings differ widely. The rate that will give one of these carriers a large net earning will produce for another no net earnings whatever. As the rates must remain the same on all these lines, there necessarily results an excess earnings or profit to one while on the others the earnings are comparatively low. What shall be done with these excess earnings —let us say for example, of the New York Central—is a very practical question which continually comes up for solution. The Securities Holders propose to divide this excess into three equal parts, giving one to the employees, one to the railway company, and the other to go to a fund with which to provide equipment for railways generally that needed financial assistance.

We can better appreciate both the weakness and the strength of this plan of disposing of excess earnings by applying it to concrete cases and demonstrate how it will work out in actual practice. Taking the earnings of the Philadelphia and Reading and the Baltimore and Ohio Railways for the year ending December 31, 1917, we can make the comparisons that will illustrate the workings of the plan. The

P. & R. operated 1,126 miles of road and had a net income of $8,548,000. The capital stock was $114,843,000. Six per cent. on this—the sum proposed to be earned—amounts to $6,890,580, which would be the dividend permitted on the outstanding stock before any surplus earnings could accrue. This dividend taken from net earnings will leave $1,657,420, as the excess earnings to be distributed. The employees would receive one-third of this sum, amounting to $552,473.00, in addition to their regular wages.

Only the outstanding stock of these roads is being used to represent property investment in these illustrations. The B. & O. operated 4,723 miles of road, which produced a net earning of $8,095,000. Six per cent. on its stock ($210,000,000) is $12,600,000, which would have to be paid before there could be any excess earnings to divide. But the earnings lacked $4,515,000 of paying dividends, so there would be no excess earnings and the employees of the B. & O. would receive nothing but their wages.

ONE-THIRD OF EXCESS TO EMPLOYEES

If this plan should be adopted how would it affect the employees and what influence would

it have on their wages, their morale and their loyalty and how much better service would they give?

It must be assumed that the B. & O. employees were just as faithful and as competent and worked just as hard for the interest of their employer as the employees of the P. & R. At the end of the year, however, they will see a great banquet spread for the P. & R. men, at which there will be more than half a million dollars divided up among them while the B. & O. men will receive nothing, although they did as much work and did it as well as the others. No argument will convince them that they are not entitled to receive the same compensation for the same kind and quantity of work that is paid to any other railway employees. Immediately there is a demand for an increase in wages, and if not granted they will be discouraged and take less interest in their work. This same apathy would extend to the employees of every other railway that had no excess earnings to divide resulting in discontent and inefficiency among most of the railway employees in the United States.

Those employees who would not receive any excess earnings would be endeavoring to find employment with the railways that were mak-

ing them. Wages could not be so adjusted as to provide for obtaining the third of excess earnings, as it could not be determined in advance what they would be. The employees would be constantly finding fault with the management because excess earnings were not provided. This would give rise to a demand that the rate schedules be raised so as to insure the excess, and this would be a never-ending source of annoyance and confusion to the rate-making authorities. This program would seriously embarrass the management and hamper it in its ability to give the public proper service.

How would this excess be divided between the employees entitled to it? If the division should be on the basis of the wages paid, there would be a conflict of interest among those whose wages were unequal in amounts. The low wage man would clamor for a raise while the best paid would endeavor to keep all other wages as low as possible. Any change of wage schedules would meet the condemnation of all those employees whose portion of the division would be adversely affected.

All in all, it is perfectly apparent that no greater cause of unrest, discontent or inefficiency among railway employees can be imag-

ined than the proposed plan of a division of excess earnings.

The fundamental weakness of this plan is the assumption that the employees are entitled to a share of the excess earnings. It must be the policy of every successful carrier to pay the employees full and generous compensation in the shape of wages for all the work they do, including their skill, ability, and loyalty to the company. It must be assumed that railway employees in the main are composed of a class of men who will give their honest and best endeavor to their business when they feel that they are receiving just and ample pay for what they do. This proposed division of excess earnings is based upon the assumption that the employees will not do their duty as well as they can, even though their wages are perfectly satisfactory, and in order that they may be induced to do better work they must be tempted by the promise of more money, which they have not justly earned. I do not believe that this assumption is in any way justified for it suspicions the integrity of these men, which in a large measure cannot be impeached.

The money which is proposed to be divided either justly belongs to the railway which earned it or to the public from whom it was

taken. The employees have no claim upon it legally or morally. The fund was produced through a rate structure made necessary by the economic conditions of the country in connection with the physical situation of other and competing carriers. The employees have nothing whatever to do with either one of these co-operating causes. For all that they do, they are paid a just and satisfactory compensation. The men who furnish supplies, engines, cars, rails and ties, and other equipment used in transportation, for which they have all been paid the full value, are as legitimately entitled to share in the division of excess earnings as the employees. They both contribute their time and energies to the general transportation enterprise. One is as essential as the other. The skill and fidelity of the engine builder is entitled to as much consideration as the experience and loyalty of the engineer who handles it, and both alike contribute to the successful movement of trains. The proposal when stripped of verbiage means the taking by legislative enactment of money belonging to one person and giving it to another who has no more claim upon it than others who have contributed to the success of the general enterprise.

This would be class legislation of the crassest kind, and class legislation is most reprehensible from every point of view. To select from the mass of the public a particular class of men, whether they be workmen, employers, or professional men, and make them the spoiled petted favorites of governmental care and partiality, is a gross perversion of all the fundamentals of a free people who are equal before the law. Such a policy would breed a spirit of resentment, and sow the seeds of discord among men, culminating in overwhelming disaster. The general public will not submit for long, patient though they are, to an injustice of which they are the acknowledged victims. Class legislation is the forerunner of class war, and class war strikes at the root of civilization.

Railway employees, as well as others, should be treated as citizens and free men, having the ability to manage their own affairs in their own way. What they demand, and are rightly entitled to, is justice and not charity. They will resent and scorn the idea that they are dependents upon a governmental benevolence not given to their fellow workingmen.

If they desire, as many of them do, to par-

ticipate in the profits earned by the carrier that employs them, they can purchase the stocks of the company, and they should be paid sufficient wages to enable them to do so if they should so elect. It would add very much to their feeling of independence and manliness to know that they had earned their property, and had not come by it as a dole through governmental favoritism.

In order that another third of the excess earnings may be disposed of, the Securities Holders plan provides that through a National Railway Association, composed of Interstate Commerce Commissioners and representatives of the railways, this money can be used to aid railways in providing their necessary equipment.

This proposition is an acknowledgment that the plan of the Securities Holders will not give to the railways sufficient credit to enable them to secure all the additional capital necessary for their purposes by issuing additional securities. Yet the railways must have this credit as a condition precedent to any efficient system of transportation which the Congress may establish. It is necessary that a scheme of recapitalization must be so ordained that it will place the railways on a safe and certain

financial basis. This is the foundation stone upon which the whole structure of railway efficiency must rest.

The suggestion that independent associations or corporations be formed for the purpose of financing the railways, and aiding them to provide new capital for equipment or extensions, or terminal facilities, is an admission of weakness that will perpetuate the evils that are driving them into bankruptcy. This suggestion may be based however upon the necessity of finding some method whereby excess earnings may be distributed so as to excite the least unfavorable comment.

WHAT SHALL BE DONE WITH EXCESS EARNINGS?

This question is receiving the serious consideration of the Senate Committee who are called upon to deal with all the problems connected with the reorganization of our whole transportation system.

Operating under the same rate schedules between the same points, some of the carriers will show much greater net earnings than others. When the rates are so adjusted as to give the weaker roads enough income to secure a proper return to their stockholders, the same

rate structure will yield to the stronger roads an earning that may be deemed excessive. The rates and charges between common or competitive points cannot be changed, but must remain the same for all the roads whose lines reach these points. The members of the Senate Committee are deeply concerned over the matter of disposing of the earnings that are to be considered excessive. The difficulty surrounding this particular problem is one of the least which the committee will have to solve. It is always easier to distribute money than it is to accumulate it, and this situation is no exception to the rule.

These excess earnings can be greatly diminished by the establishment of a more equitable basis of the traffic arrangements between the stronger and the weaker roads than has heretofore prevailed. This can be done by—

(1) Giving to the weaker carriers a larger proportion in prorating with the stronger carriers in all interchanges of traffic between them. In the main the stronger carriers take the lion's share of the joint rate, which they can compel by reason of their advantageous position. This practice can be, and should be reversed, in all

cases where the strong road will have an excess earning. The strong roads can be required to accept a much smaller share of the joint profit than the weaker ones.

(2) Entering into pooling and joint operation agreements, with the Interstate Commissioners' approval between the strong and weak roads, with such consolidations as will not be detrimental to the public welfare, and

(3) charging the weak carriers a smaller sum for car rentals when on their lines.

In many ways the roads having excess earnings can favor the weaker roads, thereby materially reducing their excess earnings.

(4) Another very effective way by which excess earnings may be lessened would be to reduce non-competitive rates and fares. Such rates and fares can be reduced where they are purely local and can only affect, in a remote way, the local fares and rates on the weaker lines in other localities. In many cases these drains upon the fund of excess earnings would entirely absorb the excess.

Taxation.—If, however, there should remain the menace of excess earnings after the fore-

going demands have been met, the whole amount of it can be dissipated by a process of a graduated excess profits tax. The Act of Congress can provide that all net earnings in excess of ten per cent. and not more than twelve per cent. should be taxed twenty-five per cent., that earnings in excess of twelve per cent. and not more than fifteen per cent. should pay a tax of fifty per cent., and all over fifteen per cent. should pay a tax of 75 per cent. —these taxes to be paid to the Federal Government.

This policy of taxation would operate so that the strong carriers would give all the assistance possible to the weaker ones, and at the same time would bring about reduced local charges. It would tend to promote consolidations, pooling arrangements and the joint use of equipment, tracks and terminals. Co-operation would be encouraged, and at the same time the initiative of individual management would be preserved and rewarded. The Government would receive additional revenues, and the public secure the best possible service.

PLAN OF THE RAILWAY EXECUTIVES

The executive officials of the railways have submitted a plan of reorganization to the Senate Interstate Commerce Committee, the main feature of which is to have a minister of transportation as a member of the President's cabinet. This cabinet officer, together with the Interstate Commission, would be vested with supreme regulatory power over the railways. It was evidently the belief of the railway executives that being a member of the President's official family this minister would be in a position to secure from the national administration, including the Interstate Commission, a fuller measure of justice for the railways than had heretofore obtained. At the threshold of this proposition comes up the question: Will the minister dominate the President, or will the President control the minister in all those matters pertaining to transportation? Serious objections to this plan have been interposed by those who have spoken and written upon this plan. Some of these objections have been stated by the Securities Holders as follows:

"We live under a partisan form of gov-

ernment. A proposal to turn these properties over to a newly appointed cabinet officer with the political power possible under such proposal, would seem to substitute a political form of control for a non-political regulatory body like the Interstate Commerce Commission. It would be unfortunate to create a situation under which these great properties might be carried into politics by placing them under a cabinet officer subject to change every four years, and in the present case in two years. It would make the railroads the political center of the presidential campaign soon to open. The execution of practical matters affecting railroad service and credit during the reconstruction period before us is altogether too vast and serious to be intrusted to a newly created cabinet official whose qualifications are now unknown. The occasion is immediate, decision is required, and the manner of execution of what may be decided upon is vital to the business, financial and agricultural interests of the country and to the general public."

One of the most eminent students of railway problems, in speaking of this plan, says:

"The plan proposed by the railway executives would not provide any real protection for their security holders. It would not correct the radical defects of the existing relations between the Government and the companies, but it would complicate these relations and provide new kinds of governmental control. It would furnish new formulas for making rates, and new grounds for litigation and for court reviews, but it would not furnish the companies with a sound basis for obtaining the credit which they need. It would fail to put an end to the recurring cycles of railroad bankruptcies and reorganizations."

The following reasons may be considered as emphasizing the causes for opposing the plan offered by the railway executives:

FREE FROM POLITICAL INFLUENCE

Political parties now exercise the governing power in every civilized country in the world. The leaders of these organizations are seeking support from those who are able to influence the voters in their behalf. Without this support the party would disintegrate and go to pieces, and the leaders would be supplanted by

other men who would assume the reins of government. The aspiration of every political party, and especially the men who shape its destinies, is to get into power and to keep the control in their own hands. The power of the distribution of patronage to their adherents cannot be overestimated. In the very nature of things the strength of the party and its leaders will be increased in proportion to the number of places they have to fill with their own political supporters. These places are sought not only for the compensation they pay but more often to gratify the perfectly laudable ambition of the applicant. The desire to be the postmaster in a country village is just as strong in the minds of the men who want the place as is the desire to be a senator of the United States in the minds of other men. And in nearly every instance the small postmaster is truly loyal to the men and the party from whom he receives his appointment, and can be depended upon to use all his energies to rally his friends to their support when the occasion presents itself. These subordinate place holders form the nucleus of the local organization upon which the candidates for state and national officers largely depend for success. It requires no argument to prove that

these men are selected because of their ability to bring support to the party candidate, rather than on account of their fitness to discharge the duties of the place. The inevitable consequence of this system is inefficiency and waste of public money. It can be accepted as a truism without a single exception in all democratic governments, that the government cannot carry on any business as economically and efficiently as private management. Wherever the attempt has been made it has resulted in poor service and accumulating deficits which the taxpayer must make good. The administration of our postal system under all parties has been so inefficient that it has been a great burden on the taxpayers to meet the losses. The reason for this is that our postal system has been treated more as a partisan asset than a business enterprise. If we will keep in mind, that every appointment the Federal Government has to give out is an asset of the party in power, it would be asking too much of human nature to expect that the party in power would not use its assets for partisan political purposes. Of course we all realize that this practice makes for political strength and solidarity at the expense of business efficiency. If party expediency is permitted to

control or influence the administration of public business, if the appointing power can sway the judgment or findings of any administrative or judicial tribunal exercising federal authority, the public must suffer and make good the waste or ultimately go into revolution as a protest against the wrongs and outrages of maladministration.

The interest of the public in a transportation system that will meet all the requirements of public service is so vital that the federal regulatory tribunal should be removed from the possibility of partisan bias influencing its action. It is for this consideration that Congress should clothe the Interstate Commission, and the National Transportation Court with the same independence and freedom of action that belongs to the Federal judiciary. This can be accomplished by giving large salaries and long appointments, and making removals only by process of impeachment. Give to these tribunals both independence and power, and they will mold and fashion all our transportation problems into a harmonious and unified system that will give to the public the fullest measure of justice and service.

On the other hand, if the tribunals of Federal regulation of the railways are subject to

any partisan political influence, they will disappoint the public; they cannot be efficient, and the system of transportation which they are called on to administer will fail almost before it starts.

REGIONAL RAILWAYS

It has been proposed that the whole country shall be divided up into regions or zones to the number ranging from five to eighteen, and for each of these a railway company will be organized under a Federal charter, which shall own and operate all the lines of railway situate in the particular territory. This plan contemplates that a few mammoth railway corporations shall conduct all the transportation for the entire United States. In the following language the plan has been outlined by Mr. Victor Morawetz:

(1) "A Federal Railway Board to be created with Supreme power of regulation and control over the Federal Railway companies to be formed as herein provided * * * *.

(2) "The Federal Railway Board to organize ten to fifteen Federal railway companies under the Act of Congress. Each of these companies to have the usual powers of railway companies, and also power with the approval of the Federal Railway Board to acquire *all* or *any existing lines of railway.* In carrying out the plan the existing lines to be consolidated in the Federal corporations as

directed by the Federal Railway Board in such manner as to make ten to fifteen well-balanced railway systems."

This proposal has encountered the opposition of the Railway Securities Holders who have given expression to lack of sympathy with it as follows:

"This objection to the regional plan may be stated:

"(a) The area of each of the (five) regional districts suggested would be more than the area of England and France combined. England and France are densely populated and their railroads serve most of the area required to be served, whereas in this country a large portion of the area of many of the regional districts suggested will be found not to be fully served by railroad facilities; the concentration incident to this plan must necessarily check agricultural and industrial development, to be had chiefly through individual initiative and incentive in railroad construction, operation and management * * * * *.

"(c) It draws the railroads closer to the general principles involved in Government ownership. It saps initiative and incentive by combining into five areas, several of them largely undeveloped, all railroads under five

managements which the plan proposed shall be largely governmental; why not therefore follow the plan devised by many advocates of Government ownership by forming one large company and take over the railroads? The only difference is there are regional companies that correspond to regional reserve banks as against the policy first announced in respect to the Federal Reserve System of one central bank.

"Practically the difficulty of bringing about one complete consolidation of all railroads is no greater than that of five regional consolidations; the latter having all the disadvantages of limitation of service and facilities incident to concentration and reaches the point where further contraction would make little difference. It would result really in five Government ownerships instead of one, with the money supplied by private means.

"(d) To those who believe that in an industry of this magnitude, upon which is dependent the agricultural and industrial growth of the country, *regulated competition* or *competitive service* is essential to good and effective service, this plan does not appeal."

The foregoing criticism takes no note of any of the good features of the scheme for regional

railways, but contents itself with pointing out the manifest defects.

The plan recognizes and emphasizes the necessity for the creation by Act of Congress of "A Federal Railway Board with supreme power of regulation" over the railways. To the necessity for the establishment of such a tribunal every one who has had any experience with existing regulatory commissions must give their unqualified assent. All those who have given any opinion on the subject have been of one mind in regard to having one centralized body vested with full power to exercise a regulatory authority over the whole subject of transportation. This power must extend to a supervision over all security issues, and recapitalization of the railways, as well as rate making, consolidations, pooling arrangements, settling labor controversies and every other transportation question that can possibly arise. Some have thought that the Interstate Commerce Commission could be so reorganized that it could act as this supreme governing head, and their plans have made provision for innumerable aids in the form of regional and other new commissions to be created for the purpose of relieving the Interstate Commission of its new and increasing bur-

dens. Under the plan suggested by Mr. Morawetz for a Federal Railway Board, it is clear that the Board would not be empowered to exercise judicial functions as well as administrative duties. In the plan which I suggest this tribunal is called The National Transportation Court, for the obvious reason that such a body must exercise both judicial and administrative power. No transportation system can be complete or even efficient unless the legal jurisdiction of court reviews is taken out of the existing Federal courts of original jurisdiction and vested in a single court established for that purpose. The saving in time and expense to the litigants demand that such a tribunal have and exercise judicial power over all processes of court review. This procedure would develop and maintain a certain and dependable system of the law of transportation. The suggestion of a Federal Railway Board with supreme regulatory power is an an excellent one, but it should likewise be vested with the necessary judicial power to insure a competent and speedy court review, if Congress can give it such power.

Some additional objections to the plan for the establishment of regional railways may not be out of place. The regional railway plan

is cumbered with too much new, complex and intricate machinery. The various agencies and governmental tribunals which must co-operate in order to put the scheme in working order are:

(1) A Federal Railway Board,
(2) Ten to fifteen regional boards,
(3) One central board,
(4) Forty-eight State Commissions,
(5) All the United States Courts, of both original and appellate jurisdiction,
(6) Ten to fifteen Federal railway corporations,
(7) And all existing companies operating under State charters that decline to go into the Federal plan.

The burdensome character of all this machinery can be illustrated by applying it to a concrete case, and demonstrating how it will work out in actual practice after it has been adopted by Act of Congress. The plan says:

"Except as to rates and as to other matters of which the Interstate Commerce Commission now has exclusive jurisdiction the existing compaies to remain subject to regulation by the several States."

A shipper brings a proceeding before a State Commission against an existing railway

to correct what he alleges to be an unjust or discriminatory intrastate rate. After many months of taking several volumes of testimony pro and con, the case is submitted and the Commission issues an order to the railroad to correct the rate or discrimination as the case may be. The railway instead of obeying this order, brings a suit in a Federal District Court to enjoin the Commission from enforcing its order. To the plaintiffs bill in equity the Commission files its answer, and issue is joined. The case is referred to a master in chancery, who spends several months in taking evidence, upon which he finally makes his report to the court. One side and often both, file exceptions to the report. The court fixes some day in the future when its time is not occupied with other business when it will hear argument of counsel. After listening to the oral argument counsel are required to file printed briefs. The court must examine the whole record, including all the evidence taken before the Commission, as well as that produced before the master. Most of this record is the testimony of conflicting experts concerning which the court has no technical knowledge. The judges doing the best they can, however, finally reach a conclusion and perpetu-

ally enjoin the enforcement of the Commission's order correcting the rate complained of. Or it may be the court will find against the railway and refuse to enjoin the order. No matter what decision the court renders an appeal is taken by the losing side to the Supreme Court, and after pending there for several months, sometimes a year, that court decides in favor of granting the injunction on the ground that the order affects Interstate Commerce and the State Commission had no jurisdiction to make the order. This leaves the shipper precisely where he was before he applied to the State Commission to correct his grievances. He has been engaged in this suit never less than a year, and often as much as two years, to find nothing accomplished except serious loss in time and money. He must either submit to the payment of the unlawful rate or start all over again by bringing a new proceeding before the Regional Board.

The shipper will have the privilege of applying to the Regional Board to hear his complaint. After presenting his case and taking proof before the Regional Board, that body will render its decision and issue its order of correction. But the plan provides:

"But no regulation by a regional board to

take effect until approved by the Central Board of Regulation." This proviso makes it necessary to take the case on appeal to the Central Board, where it will be gone over by that board for the purpose of approval before the order can become effective. This will require argument and a hearing with the probability of taking new evidence involving time and delay. When the Central Board finally reaches a conclusion, its action then is subject to review by the Federal Railway Board. This means still more delay before an enforcible order can be issued. For the scheme provides further:

"All acts and decisions of the Central Board as well as the regional boards of regulation to be subject to the supreme authority of the Federal Railway Board."

After the Federal Railway Board has reviewed the case and approved the order requiring the railroad to correct the evil complained of, requiring yet more time and delay, this is by no means the end of this controversy. In fact it is just the beginning or laying the foundation of a lawsuit. It will be remembered that these boards are all administrative and none of them are vested with the exercise of judicial powers. That the railroads are en-

titled to have a court—a tribunal vested with judicial authority—review the orders entered against it by administrative boards or commissions. The constitution prohibits the taking of any one's property without due process of law, and in rate regulation due process of law gives the railways the right to have administrative orders reviewed by a court in the exercise of its judicial powers. After trying the case in the regional board, then in the central board and finally before the Federal Railway Board, winning his contention in all of them, the shipper at last is met with an injunction proceeding to restrain the boards from enforcing the order against the carrier. This is a regular suit in equity brought in one of the United States District Courts, where the case is subject to the usual court processes. Original pleadings are filed and a new record made upon which the court must base its judgment. The whole matter must be again gone over and fought out in the District Court according to the rules of equity procedure. In the course of time the District Court renders its decision, either approving the order or enjoining its enforcement. By a regular process of appeal the case is taken to the Supreme Court for final judgment.

By virtue of the regional plan the shipper who is a victim of unlawful discrimination, before he can get relief, is required to try his case, (1) before a Regional Board, and (2) before the Central Board, and (3) in the Federal Railway Board, and (4) in a District Court of the United States, and (5) finally in the Supreme Court of the United States. To be compelled to try his case in each of these five separate and distinct tribunals, with all the expense and delay incident thereto, is equivalent to a denial of the shipper's right to be relieved from unjust rates and unlawful discriminations. It must be apparent that there is too much complex machinery involved to make the plan workable so as to be expeditious or efficient.

In contrast with this plan for Regional Railways there is suggested the much simpler method of a hearing before the State Commission, an appeal to the Interstate Commission, with a right to a court review by the National Transportation Court upon the record made before the State Commission. This plan will eliminate all unusual delays and expense, and it goes without question that the plan to be adopted should be very simple, and give to the

shipper his redress in the shortest possible time.

ADVANTAGE OF REGIONAL RAILWAYS

The advocates of Regional Railways have advanced but few arguments in support of their plan. One contentoin is that as our financial system of Regional Banks has been a success, that the railways should be organized and operated on a similar regional basis. The assumption is that any enterprise will succeed if it can possess itself of a regional feature. This is reasoning by analogy when there is no similarity between banking and transportation to support it. There is not even a resemblance between the two enterprises. The regional banks are intended to be mere aids to the member banks instead of merging them all into one gigantic corporation. The member banks retain their individuality, and transact their local business in their own way and practically in the same manner as before the regional banks were formed. Whereas in the plan for regional railroads it is proposed that the existing railways will be taken over and operated by a Federal corporation having ownership and jurisdiction over twenty or

twenty-five thousand miles of railway wherein existing companies will lose their charters and their identity. Many other features of dissimilarity suggest themselves which renders this argument of analogy untenable.

The principal consideration, however, back of the purpose to establish regional railways is the belief that by grouping together under one ownership and management all the railways in a given region or territory, it will require the stronger roads in the group to support the weaker ones. In this way it is thought that the excess earnings of the strong lines can be so distributed as to help those whose earnings are much smaller.

The best method to distribute excess earnings has been discussed herein at page 135, and need not now be repeated. A fatal defect in this process of reasoning is that the plan for regional railways contemplates that existing railways are expected to go into the regional scheme voluntarily, as the Federal authorities will not compel any of the carriers in a given zone to join the regional plan and become absorbed by it. All existing carriers may stay out if they choose, and continue to own and operate their properties under State charters in the same manner as before regional rail-

ways were established. The inevitable result would be that all the weaker roads would rush into the regional system in order to receive help and better the situation of their stockholders, while the stronger lines would remain out rather than be compelled to divide their earnings to the serious injury of their own stockholders. Such stockholders would receive a greater return on their investment by staying out than by going in to the new arrangement. They certainly would not willingly surrender their great advantage to their own loss of income. Under the regional plan no real benefit could be secured by the weak lines consolidating with each other. This is obvious and the plan would fail to accomplish its principal object.

Even though all the roads in a given region should be compelled by Congress to surrender their property to one Federal Railroad Corporation which would own and operate all the lines as a single unit, the result would be precisely the same.

The inherent weakness of the plan for regional railroads can be fully shown by applying it to a concrete case, in which it will be demonstrated that the plan will not work out in actual practice.

In pursuance of the plan the country will be divided up into regions for each of which there will be one Federal Railway Corporation. This Federal company will issue its stock and bonds in payment for all the railways located in the particular territory. The plan provides a basis for the issue of these securities to the existing security holders of the various railways to be taken over by the Federal company. In fixing the value of existing railways the following method is provided:

> "It is submitted that the only fair and practicable way of measuring the value of a railroad and the just compensation to which its owners are entitled is, (a) To estimate as nearly as may be its present and prospective *true operating income,* under a fair as well as constitutional exercise of the powers of regulation vested in the Federal and State governments, and (b) To capitalize this true operating income at a fair rate, based on the rate of interest or profit payable to obtain capital and on any risks or uncertainties affecting the railroad and its future operating income."

This method is proposed in order

> "to establish the relative value of the sev-

eral railways to be vested in each Federal corporation, so that some of the existing companies may not obtain an advantage at the expense of the others."

Applying these provisions to the Seaboard Air Line and Norfolk & Western Railways, the following results are obtained: These two railroads are used for illustration as they will almost certainly be located in the same region, and be merged together into one Federal corporation.

In order that the Federal corporation may know how much stock it should issue in payment for these two properties it becomes necessary to ascertain their respective values. The value in each case will be determined by "estimating as near as may be, their true operating income * * * and then capitalizing this true operating income at the prevailing rate of interest." By using the calendar year 1917 as representing this income we find that in the case of the Norfolk and Western, it amounted to $19,651,816. Capitalizing this income at six per cent. the value of the property is found to be $327,530,000. For which the Federal corporation would issue its securities in an equal amount. But the present outstanding stock and bonds of the company is only $234,-

948,000. This would give the present security holders $92,582,000 more stock and bonds of the Federal company than they now possess. The Federal company must earn a six per cent. return upon this increased capitalization of $37,530,000, in order that the present stock and bond holders may receive full value for their property. This earning would exhaust the whole operating income which the Federal corporation would receive as coming from the Norfolk and Western lines. As a consequence there would be nothing earned by the N. & W. line in the nature of a surplus that could be diverted into aiding the Seaboard Air Line road, or other weaker lines absorbed by the regional railroad.

Applying the same rule for determining the value of the Seaboard Air Line Railway, we have its operating income for the year 1917 amounting to $7,237,881, capitalized at six per cent. would fix the value of this property at $120,631,000. This would be the amount of the regional railroad securities issued in payment of that property. But its present stock and bond issues in the hands of its security holders aggregate $192,433,000, which is $71,802,000 more than they would receive from the Federal corporation. Securities amounting to

$71,802,000 would have to be cancelled and for which the holders would receive nothing. It would require all the operating income of this road, $7,237,881, to pay a six per cent. return upon the securities issued by the Federal corporation. It is manifest that neither line would secure any benefit from this arrangement, and the security holders of both concerns would seriously object to turning their properties over to the regional railroad under such conditions.

But this method of arriving at the value of a railway cannot be provided or enforced by Act of Congress. Fixing values of property, or specifying the elements constituting value is not a legislative function, but belongs exclusively to the judicial department of government. Determining values is not within the scope of legislative power. The courts must fix values and lay down the rules whereby all the elements constituting value must be considered. Economists have evolved many theories for railway valuation, such as original money cost of construction, present cost of reconstruction and right of way, and the market price of stock and bonds, and earning power. How much weight should be given to each one of these factors must be settled by the courts.

To arrive at values by estimating the true operating income is probably the least reliable method that has yet been advanced. At best it can amount to not much more than a guess. This is apparent from the fact that many factors unforeseen and uncontrollable unite to influence either up or down the operating income—weather conditions, the fluctuations of business activity management, equipment and facilities and rates—all play an important part in determining operating income. Using the N. & W. income to show these violent changes in the last ten years, they cover the following range:

1908 income	$5,773,000
1909 income	6,665,000
1910 income	9,043,000
1911 income	7,557,000
1912 income	9,381,000
1913 income	11,106,000
1914 income	10,268,000
1915 income	10,409,000
1916 income	20,624,000
1917 income	19,651,000

It would not do to average these for the road has shown an actual capacity to nearly quadruple its operating income in ten years. Have the companies earnings reached their

maximum or is there a reasonable expectation that they will continue to increase in the future and if so to what extent?

A change in rates would make a tremendous difference in operating income. The N. & W. hauled 36,000,000 tons of coal, and an increase of fifteen cents a ton would add to operating income the sum of $5,400,000—which being capitalized would augment the road's capitalization by $90,000,000. If this plan should be adopted it would necessarily inflict upon security holders the grossest injustice.

OPERATION OF REGIONAL RAILWAYS

The advocates of regional railways appear to have given but scant attention to the difficulties that will arise wherever twenty or twenty-five thousand miles of railway are to be operated as a single unit by one executive head. Mr. James J. Hill said repeatedly that six thousand miles of track was as much as could be operated efficiently as a single unit.

A little reflection must convince us that the public interest demands that competition in service should be maintained by the railways. To attract business to a particular road by reason of its rendering superior service is conclusive proof of a wise management. Such a

policy pleases the patrons and brings prosperity to the road. It does more for it spurs the competing road into an effort to improve its own traffic conditions. But when all previously competing roads in the same general territory are surrendered to one corporation to own and to operate, there can be no longer any real competition between them. A single ownership will destroy all competition in service. The stimulus for the expeditious handling of traffic will be gone. Loaded cars will stand on switches and side tracks for weeks with no attempt to move them. The operation of the roads by the Government is emphasizing this condition daily.

The most efficient railways are those whose executive heads keep in constant personal touch with the shippers and industrial enterprises along their lines. The shipping interests require that a manager with authority to act should be so located that he can be reached in a short time for personal conferences. The good manager will have a personal knowledge of the industrial conditions of every plant on his road that offers any considerable quantity of freight. He will be cognizant of the productive possibilities of agriculture, mining, manufacturing and all other industries which

his railroad serves and he will use his power to develop these enterprises to the highest point of production. He must act quickly upon propositions coming from his shippers. In view of the extensive area covered by twenty-five thousand miles of railway, and the diversified industries located in a single region with all their complex ramifications, no manager can have the requisite information to deal with these conditions intelligently. It is true that there may be superintendents and local representatives without number, but they will have no authority to act except on routine matters and questions of very minor importance. They will have to send everything of consequence to those higher up for their action and approval. This is red tape and takes time, and in the meanwhile the shippers' business is suspended or held up awaiting the action of the manager.

It is physically impossible for the operation of twenty-five thousand miles of railways extending from Washington into Florida and New Orleans and from Norfolk to Columbus, Cincinnati and Louisville to be as efficient as that of the Norfolk & Western, with only two thousand miles of line, where the management

is personally cognizant of every detail and factor that makes for good service.

A regional railway would be so huge and cumbersome that it could not be operated as skilfully and economically as the individual lines in single units.

GOVERNMENT GUARANTIES

Some very eminent gentlemen have recommended that the government place its guaranty upon bonds and stocks issued by railroad companies. The argument in support of this position is that the government should give its written pledge that the bonds and their interest should be paid as they mature, and that regular minimum dividends should be paid on the stock. And if for any reason the companies do not earn enough to meet these demands, the government binds itself to pay the difference. According to their contention this course is made necessary, in order to give these securities such a certainty of income that investors will accept and pay for them. Under their plan of railway reorganization and recapitalization, the carriers will fail to be self-sustaining, and the taxpayers must bear the burden of all such failures.

The Spokane, Portland and Seattle Railway owned and operated in 1917 a line of railway between these cities of 554 miles. The company is capitalized at $212,000 per mile, aggregating a total of $117,600,000. For the year's operation it had a deficit of $420,994.00.

It earned nothing on its $40,000,000 stock. Had the government's guaranty been on these securities, it would have cost the taxpayers of the country about $2,500,000 to make good the deficit. More than three-fourths of the traffic of this road was the products of timber and agriculture moved to the Pacific Coast. Under the government guaranty plan the citizens of Maine would be called on to pay a part of this loss.

The wisdom of a policy of government guaranties has not been discussed by its advocates. The propriety of imposing additional colossal burdens upon the taxpayers of the country in order to support their transportation plan does not seem to have occurred to them. The government's credit has been so impaired by the volume of its outstanding obligations that they have depreciated in value to the extent of seven or eight per cent. Government bonds for which the holders paid one hundred cents on the dollar, are now selling on the market for ninety-two to ninety-three cents on the dollar. The credit of the government will continue to fall in proportion as its obligations are made to increase.

We have come to that place in the history of our country where the government must adopt

a policy of socialism, and enter into a purpose of experimentation with socialistic theories involving as it does not only a revolution in the functions of government itself, but a complete reorganization of our whole industrial fabric; or the government must continue to leave our material affairs to private enterprise, which up to this time has secured for us a progress so great that it almost borders on the miraculous. Socialism, says the government, must take over, own and operate all our industries, through bureaus and officials appointed for the purpose. The anti-socialist believes that the initiative, the skill and ability of the individual should not be shackled by the artificial restraints of state interference, which means the wielding of despotic power over the ablest and most forceful men in our citizenship. Men like Gary, Schwab, Hill, Harriman, Wanamaker, Ford, and Morgan, and hundreds of others who have done so much for the development of the country and the building up of its industries, would be impossible in a socialist's state. Their power for good would be suppressed, and their places as executives would be taken by Soviet councils, such as are now controlling the destiny of Russia.

The aim of Socialism is revolution, both governmental and industrial, and revolution spells anarchy. In dealing with the railroad situation, the Congress will have to be guided by one of two opposing philosophies. The stream of socialistic tendency which has had such an impetus by recent events, will be greatly augmented by legislative action, or it will be checked by a policy of governmental regulation that will amply protect the public interest which at the same time vouchsafe to private ownership an unhampered power of individual initiative for the public benefit. Any governmental purpose to guarantee income on railroad securities will necessarily advance the cause of socialism.

It is no part of the functions of government in a free country to engage in industrial pursuits. Why should our government embark in the transportation business, when it is certain that the public will receive better service under private ownership and management of the railways? The scope of government should be limited to an efficient governmental regulation, which will give to the carriers all the credit they need by a safe system of recapitalization with a legislative requirement of a minimum return, resulting ultimately in lower

rate levels. Every transportation enterprise should be self-supporting, otherwise it will become a burden on the taxpayers and an economic waste.

A policy of governmental guaranties is attempted to be justified on the ground that it will strengthen railway credit, while that may be true, it will surely have a depressing effect upon the credit of the government. To ask that the government lend its credit to the railways is a confession of its advocates that their general plan for railway reorganization is wholly inadequate and must fail before it fairly started. They object to the Congress requiring the regulating bodies to so adjust rates that the minimum income shall not be less than five per cent on a capitalization of actual values. Their objection is stated as follows:

"We live under a democratic form of government and the will of the people rules. That is a fact which no one would change even if it were possible, but investors are not blind to the lessons of history and to the signs of the times. They have learned that in the long run legislatures and commissions, all of whom directly or indirectly, are chosen by the people and are accountable to the people, cannot be

depended upon to regulate railways and to fix their rates in such manner as to make railway stocks a safe investment. * * * Even if Congress should enact a law providing a just and workable method of determining the value of the property of the railway companies, and the rate of return thereon that is to be deemed fair and also a workable formula for fixing rates that will produce this fair return, the Act of Congress itself could at any time be altered, amended or repealed."

This argument is based on the assumption that the Congress cannot be depended upon to deal fairly and honorably with the people who have been induced to invest in railway securities under a solemn enactment of the Congress giving them its pledge of honor that they should receive a minimum return of five per cent. on their actual cash investment. This means that this Congress has, or some future Congress will so deteriorate that the people will be warranted in withholding all confidence in its honor and integrity. If such a condition should unfortunately ever come to pass, every security that now upholds the institution of private property will be utterly destroyed, and confiscation will have undoubted sway. Our law making power has and

must continue to be dominated by moral considerations. When it loses all its sense of honor it would feel as little bound to provide for its legal contracts as for its moral obligations. In any event, the sanctity of the government's contracts is dependent upon congressional action, for its debts can only be paid by an appropriation voted by the Congress. It is just as easy for the Congress to refuse the appropriation as it would be to repeal the act providing for a minimum return on railway securities. The only power that can compel Congress to provide for the payment of the government's debts, or restrain it from repealing any act is the combined moral sense of the President, the Senate and the House of Representatives. It would be most unfortunate if the people ceased to have faith in the honor of these three great branches of government constituting our law making power. Yet the whole argument for government guaranties is based on the assumption that the people cannot trust their Congress.

The success of government guaranties in other countries has been recently investigated and reported upon by Mr. F. H. Fayant. A press excerpt from the report is as follows:

"FRENCH FINANCING OF ROADS A FAILURE

"F. H. Fayant Cites Situation in Warning Against U. S. Guarantee to Lines

"The experience of France with the policy of governmental guarantee of income on private capital invested in railroads have been very unsatisfactory, according to Frank H. Fayant, of the Association of Railroad Executives, in a report to that body of a study of French railroads. The adoption of such a policy in this country will inevitably lead, in the opinion of Mr. Fayant, to a lowering of the efficiency of American roads and eventually to Government ownership.

"The uneven working of the French guarantee plan before the war made the administration of the railroads a continuously discussed political problem, with a constantly recurring agitation for the repurchase of the companies and their operation by the State.

"The expectation had been that, after a few years of development, during which time the State would be obliged to advance the companies funds with which to

pay charges on capital not yet yielding a profit, there would follow a period of expanding business and rising earnings that would enable the companies, first to repay their advances from the public treasury, and later increase their dividends to the point of profit sharing with the State.

"Profits for State Expected

"It was confidently expected that at the end of the concession the six great lines, developed to the point of perfection under private ownership and operation, would automatically become the property of the State, free of all capital charges and with such profit making possibilities that they would provide the funds to meet a large part of the general expenses of the State.

"The results, Mr. Fayant goes on to say, were very disappointing, and all but two of the roads have been forced to appeal constantly to the government. There has been no profit sharing, he says, and the guarantee has only served to entangle the weaker roads in politics and public finance.

"It has been a handicap to progress and has stunted private initiative, says the report.

"Mr. Fayant, while admitting that the experience of one country is seldom an unfailing guide for another, because of differences in economic conditions, racial characteristics and national traditions and ideals, conclude that it would be a grave error for this country to go into financial partnership with the railroads.

"Forsees Partisan Struggles

"Instead of getting the railroads out of politics, would not such a partnership inevitably drag them more deeply into the meshes of partisan struggles? he asks. In a word would not direct guarantee of railroad income inevitably lead to government ownership and operation?

"If we are to retain the advantages of private initiative and save our transportation system and all our machinery of production from the deadening blight of political meddling we ought to consider well the dangers involved in any proposal for a financial partnership between the railroads and the government.

"Should we not attempt to correct the recognized faults in our system of regulation and build on the sure foundation of the past rather than enter on an era of

political experimentation with new and untried theories? asks Mr. Fayant.

"If we are to have a more definite guarantee that capital and brains devoted to the production of transportation shall be fairly rewarded, let us find a formula that will not admit of too easy translation into government ownership."

REGULATION OF RAILWAY EMPLOYEES

Practically all railway employees belong to organizations or unions that have the power to quit work any time. They can stop the running of all trains and paralyze every industry in the country, and bring famine and starvation to millions of people. They not only have the actual power to do this, but under a law of Congress recently passed they are justified, and indirectly encouraged, to exercise this power. By the common law, and by statutory enactment, any agreement or combination in restraint of interstate trade is illegal and made criminal on the ground that such a purpose, if carried out, would be not only detrimental but destructive of the public welfare. But labor organizations were expressly exempt from the operation of these laws by a provision of Congress contained in the Clayton Act. By implication at least they are told not only to restrain interstate commerce, but to stop it entirely whenever it suited their own private purpose. They may lawfully do an act which, if done by other men, would send them

to prison. Such class legislation as this, if persisted in, would destroy this republic.

The Congress has absolute power over interstate commerce and all the instrumentalities that are used in connection with it. It has precisely the same right to regulate the employment and fix the wages of all the employees of a railway company doing an interstate business, that it has to fix the rates or income of the carrier. They are both necessary instrumentalities in interstate commerce. They both devote their time and their efforts to interstate commerce. They are both charged with the performance of a quasi public duty, and submit themselves to be regulated by such governmental agency as the Congress may provide, including the compensation for their services. They are both monopolies, and should be regulated in the public interest, as the public must pay all that each receives for what they do. Any regulating tribunal that Congress may establish must have the same jurisdiction over the wages of the employees as over the rates to be paid by the public to the carrier, for the wages are necessarily included in the rates. The consuming public pays the wages, and the public interest demands that it be protected from unjust exac-

tions imposed by either carrier or employees. If the employees demand more wages than the public thinks it ought to pay, let the controversy be submitted to an impartial Federal tribunal that will do justice to both sides. The public will have to pay whatever the Federal authorities may fix, while the employee may accept it or not. He will be at liberty to seek other employment. Only the employees must be prohibited from entering into any agreement among themselves to tie up the whole transportation system of the country. Each individual may quit work when he chooses, but not en masse, nor as an organization that would result in stopping the running of trains.

That commerce may continue to flow freely from one state to another without interruption or hindrance is so vital to the very life of the people, that no body of men, however wise or benevolent they be, should be permitted to have or exercise the power to stop or check it. The railway employees today hold in their hands the power to completely destroy all interstate commerce, and stop every mill and factory in the United States, and bring famine and starvation to all the large towns and cities. The best public interest requires that

the menace of such an arbitrary power lodged in any organization or combination, should be removed at once. The safety of the public should never be left to the whim or caprice of any combination organized for the purpose of promoting its own interest. The seriousness of this condition cannot be minimized by the expectation that the railway employees would not exercise the power they have to stop commerce and bring suffering and death to the people. The Clayton Act placed this power in their hands, and then they proceeded to exercise it by forcing the Congress to grant them in the Adamson Act what they demanded. The Congress passed the Adamson Act to avoid the calamity that would ensue if the employees carried out their threat to strike in a body and suspend all railway traffic. If the Congress can be coerced against its will by a comparatively small number of men to grant their peremptory demands without any opportunity to investigate or determine the justice of the demand, as was done in the Adamson Act, we can expect that the same force will again be invoked.

This coercive power has been used to destroy the independence of Congress, under a threat to destroy the public if the Congress

did not yield at once. If the Congress is to remain a deliberative body, seeking to promote the general welfare, it must remove from its consideration every private interest, whether it be a labor monopoly or a capitalistic monopoly. Unless the Congress can realize that the general welfare against any private or personal interest must be the basis of legislation, we cannot expect a continuance of free institutions.

The proposition is a very simple one, and not difficult to state.

If the purpose of two per cent. of the people is hostile and destructive to the life and industry of the other ninety-eight per cent., which should prevail? Which as a matter of sane public policy should be destroyed? How can the legislative branch of the government justify an act which gives to two per cent. of the people the power to destroy ninety-eight per cent. of the people in order to subserve its own private and personal interest? Congress has the power to give to the railway employees the amplest and fullest measure of wages and working conditions consistent with the public welfare. An impartial Federal tribunal can be created that would do justice both to the employees and the public in every controversy

that can arise between them. The public has no power to coerce or injure the employees, and likewise the employees should be stripped of all power to destroy or injure the public whom they serve. What hardship or injustice could be imposed upon railway employees by having a Federal authority fix their wages and working conditions, whenever controversies arise? Every other public servant from the President down to the scrub woman has his compensation fixed by Federal authority under Acts of Congress. The same is true of every stockholder who has his money invested in interstate railways. Why should the Congress make an exception of railway employees, and give to them a power of destruction over the people, to be used if they are not permitted to fix their own compensation and prescribe their own working conditions?

Congress should enact such laws as will subordinate every private interest to the public good; and especially should every organization or combination of men, no matter for what purpose brought together, be stripped of the power to inflict upon the public the disaster of famine and death. If we cannot protect the ninety-eight per cent. of the people against the exactions of the other two per

cent., it is conclusive proof that we have failed in our effort at self government.

THE RIGHT TO STRIKE

The courts, the public and legislatures, all recognize the right of working men to stop work for any reason, or even without reason. The liberty of the individual is so protected by constitutional provisions that he cannot be compelled to perform services for another against his will. If such were the case it would be a denial of freedom, and men could be forced into involuntary servitude. The right to strike should not be denied to labor organizations, in any personal or private business enterprise. The right of the individual to quit work at any time must be recognized whether his employment be public or private. A strike is where all the employees quit work after they have conferred together, or through their representatives. It is always the result of a previous agreement to go out. The purpose of a strike is to close down the plant and prevent its running until the demands of the workmen have been satisfied. A strike says to the employer, "You cannot operate your property unless you agree with the men who have quit their jobs. You must meet our demands or go

out of business." In the controversies that arise between the owner of a private business —one that is run solely for the profit of the proprietor—and his employees, the public as such is not concerned, unless there is a strike resulting in violence. The public has but small interest in a peaceful strike which affects only the personal interests of the striking employees and their employer. All the losses incident to a strike of this character must be borne by the employer and employees, and not by the public.

But there is another kind of labor controversy in which the public is the main party in interest. Wherever a strike occurs among the employees of public utilities companies that stops their operation, the public at once becomes a helpless victim. The reason why the public continues to suffer loss and outrages from these strikes, is that the public, through its legislative assemblies, have taken no steps that will give it protection against the warring factions. A street railway strike will suspend nearly every industrial enterprise in the city. Any attempt to operate the cars in the public's interest during a strike will result in violence, bloodshed and anarchy. Generally speaking, a street railway strike marks the end of a

reign of law, and the beginning of revolution, wherein the public is the chief sufferer. It seems incredible that the legislatures would permit this situation to continue. It is true that provision for conciliation boards have been made in some of the states. These boards have no authority to do anything toward settling the trouble, except to suggest a compromise. Their idea is to fix up a compromise regardless of the justice of it—any temporary makeshift to stop the strike and start the cars to running again.

This is all that legislation has done for the protection of the public against a practice and course of conduct, which, if permitted to continue, will undermine the foundations of civil government. The failure of the legislatures, and the Congress to meet this situation frankly and fairly, and give to the public that measure of protection to which it is so justly entitled, is the weakest spot in our whole system of governmental machinery. In considering this subject the legislator has not seen any difference between public and private employment. He has failed to realize that the conductor and motorman on a trolley car are serving the public in the same way as the policeman, and that the services of the engineer and

fireman on a train are essential to the public welfare as the soldier in the ranks. They are all working for the public, and are being paid by the public. They must not use their employment so as to impose irreparable loss and injury upon the public. Recognizing this condition as an ever present evil, we naturally ask what is the remedy? What can be done about it?

The Congress and State legislatures have ample authority to prohibit all agreements in restraint of commerce. The Congress has already enacted such a statute, but through some influence detrimental to the public welfare, labor organizations have been specifically exempted from its operation. If the Congress would make trainmen amenable to the same laws against agreements in restraint of interstate commerce, that apply to all other citizens, there would be no such thing as a strike that would interfere with the running of trains. Every strike is the carrying into effect of a previous agreement entered into by those who go on strike. The necessary consequence of which is to stop the running of trains. This would not only restrain the flow of commerce, but would stop it entirely. If all the train crews should go on strike at the same time, in

pursuance of an agreement so to do, it follows necessarily that such agreement operates to restrain the movement of commerce. The strike is the power which the employees now have to compel the railway companies to grant their demands. This power to strike can only be exercised in pursuance of an agreement. If the law will prohibit such agreements, the power to strike will be destroyed, and as a consequence strikes will be prevented.

If the strike is prohibited or done away with, how can the railway employees secure for themselves just wages and good working conditions? What remedy or recourse can they have substituted for the strike whereby they can obtain just wages and better working conditions? The very best possible wage and working conditions consistent with the public interest must be given the employees as a suitable reward for their skill, ability and loyalty. Whatever compensation the employees receive must be paid by the public, which is the other party in interest, although the employee is not employed by the public.

The Interstate Commerce Commission will stand between the employee and the public as an impartial tribunal with power to adjust all labor controversies. This Commission will

take the money from the public with one hand and give it to the employees with the other. It will be just to both. Can any one find any reasonable objection to this plan of settling labor controversies? The Commission fixes the compensation of the railway companies for the services they render the public, and for precisely the same reason should it fix the wages. It does not permit the carriers to exact too much from the public, and its jurisdiction should likewise be extended to the employees compensations. Who is the best judge of a fair wage scale and working conditions? An impartial Federal tribunal or the employees themselves? No man should be the judge of his own case, for it is contrary to the jurisprudence of all civilized peoples. It is not asking too much of the employee to say that the Interstate Commerce Commission must have the power to settle any dispute he may have with his employer. He can accept this settlement or not, as he chooses. If he is not satisfied, he can quit any time he pleases. He may stop work as an individual. The only limitation placed upon him is that out of consideration for the public welfare, he must not go on a strike in pursuance of an agreement with his fellow workmen to stop the running of trains.

In this he will simply be obeying the same law that applies to all other citizens.

The necessity for devising a sane and just method of adjusting all controversies arising over the wages and working conditions of railway employees is imperative. No system of transportation can possibly be efficient or meet the public requirements which leaves in the hands of a few men the arbitrary power to stop the running of trains whenever they please.

The public must be served efficiently, and continuously, without interruption from any source. In order to secure such a service the public stands ready to compensate the investor and employee alike, not only justly but even generously. That full and ample justice may be done to the public, the investor and the employee, there must be some impartial Federal tribunal created with jurisdiction and power to settle every possible question that may arise between these apparently conflicting interests.

SUGGESTIONS OF THE SUPREME COURT

Time and again the Supreme Court has pointed out the inherent weakness of our transportation sytem in that the States can and do exercise a large measure of authority over interstate commerce, both directly and indirectly. The court has emphasized the conflict of authority between State and Federal regulation in two conspicuous cases: The Minnesota Rate Cases, 230 U. S. 352, and the Shreveport Case, 234 U. S. 342—holding in the first that a State has the power to so regulate intrastate rates as to affect interstate commerce, and in the latter case that the State does not possess this power. The cases are attempted to be harmonized on the ground that the decisions were governed by the peculiar facts of each.

The court in every case that has come before it, has reiterated the dominant power of Congress over interstate commerce:

> "Wherever the interstate and intrastate transactions of carriers are so related that the government of one involves the control of the other, it is Congress and

not the State, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of constitutional authority and the State, and not the Nation, would be supreme within the national field" * * *

"Congress, in the exercise of its paramount power, may prevent the common instrumentalities of interstate and intrastate commercial intercourse from being used in their *intrastate operations,* to the injury of interstate commerce. This is not to say that Congress possesses the authority to regulate the internal commerce of a State, as such, but that it does possess the power to foster and protect interstate commerce, and to take all measures necessary or appropriate to that end; although *intrastate* transactions of interstate carriers may thereby be controlled.

"It was recognized at the beginning that the Nation could not prosper if interstate and foreign trade were governed by *many* masters, and, where the interests of the freedom of interstate commerce are involved, the judgment of Congress and the agencies it lawfully establishes must control."

There can be no question about the power of Congress to regulate and control intrastate commerce whenever its regulation by State authority will in anywise affect either directly or indirectly the carriers engaged in interstate commerce. There can be no adequate system of transportation established unless Congress acts upon the matters that have heretofore hindered their efforts to perform their duties as common carriers engaged in interstate commerce.

RETURN OF RAILWAYS TO THEIR OWNERS

While government control and operation of the railways has resulted in poor service and greatly increased cost of conducting the transportation, it has again demonstrated the incapacity of government to manage and direct any business efficiently. The public has been compelled to pay not only increased rates and fares, but is called on to make up large losses by taxation, to meet the growing deficits brought about by the railway administration. This experiment is a complete answer to all the socialistic clamor for the nationalization of all industry, and more especially for government ownership of all public utilities. The lesson has been a very expensive one; yet if heeded, it will save us from many a blunder and disaster in the future. While the thing is still upon us, where we can see and feel the faulty service, compared with what we received when the railways were under private management, there is almost a universal demand for turning the railways back to their owners. True, some of the railway employees appear still to favor government ownership

with the right of the employees to operate the roads, which position can not be said to be a disinterested one.

It is practically certain that the Congress will not permit government operation any longer than is absolutely necessary. The railway administrator has bought a great quantity of equipment for the roads which their officials say is not needed, nor can it be used. The railways naturally object to paying for unnecessary and surplus equipment. In addition to this controversy, many other serious questions have been injected into the railway situation. Rates and fares have been raised, wages have been increased, and matters of maintenance and depreciation will have to be adjusted. It will be impossible to settle all these difficulties by the owners and representatives of the government within any reasonable length of time. In many instances, the parties in interest will not be able to agree at all. Some impartial tribunal must be provided before whom all such controversies may be taken for final action and decision.

The National Transportation Court is the proper body to settle all questions between the Government and the owners growing out of Government operation. The day of the return

of the properties to their owners can be so fixed by a tribunal specially fitted for the purpose as to cause the least possible friction and embarrassment to the carriers. This can be done much better by the Transportation Court than by the Congress, for the Congress would necessarily name the time when the Government would return all the roads, whether the owners would be ready to receive them or not. Immediately upon their return the owners will be compelled to make large expenditures of new capital. Provision for this capital should be made in advance of receiving the roads and the restoration of private management. The law which Congress will enact will be the basis of railway credit which alone can enable the roads to do the requisite financing.

Whenever the conditions are most favorable for each road it should be turned back, but if the government surrenders them all on the same day, it will result in certain confusion that should be avoided. A conference between the representatives of the railways and the Transportation Court wherein agreements will be reached as to the time when each road will be turned back, will develop the most propitious time when they should be surrendered. By this method the return will be more or less

gradual, as all the carriers could not be expected to perfect their arrangements at the same time.

The controversies between the owners and the Government will be numerous, involving large sums of money, and the settlement of an infinite variety of questions. These matters cannot, generally speaking, be adjusted until after the properties are returned, although it is expedient that they should be finally disposed of at the earliest practicable time. The National Transportation Court will be the most competent tribunal to make these adjustments.

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